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Organization
Senate Reform

Second Session, 34th Parliament
Wednesday 20 December 1989
Monday 19 February 1990

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL AND INTERGOVERNMENTAL AFFAIRS

Wednesday 20 December 1989

The committee met at 1554 in committee room 1.

ORGANIZATION

The Chair: I think we should get started. First, I would like to welcome you to the committee. I am absolutely delighted with the opportunity to chair a committee that will be dealing with such an important national matter. I am looking forward to a very productive time in the next six or eight months.

The first item of business would be the election of a vice-chair. Miss Roberts, would you have a motion?

Miss Roberts: I move that Dalton McGuinty be elected vice-chair.

The Chair: Are there any other nominations?

Motion agreed to.

Mr Allen: Mr Chairman, before we proceed, perhaps it would be appropriate to compliment you on your appointment as chairman of this committee. It clearly is going to take over a very significant task that we have been dealt, the early moves on Senate reform as a result of the Meech Lake debate in the state it has reached. This is going to be a very important exercise, obviously one that we are all going to want to give a great deal of assiduous attention to and devote a lot of energy to, and one that I think the province can make a fairly significant contribution to in the national debate on it.

I think it is important that we not only have a good committee, as I look around the committee and see who has been appointed, but also yourself as chair. I have respected the clarity of your participation on the committees I have been on with you and I look forward to working under you on this committee.

The Chair: Thank you very much, Mr Allen. I appreciate it.

Mr Eves: Mr Chairman, I also would like to congratulate you on your having accepted the position of chairman of the committee. This is probably one of the more important and nonpartisan committees of the Ontario Legislature. I consider it a privilege and an honour to be a member of the committee. I was on the last constitutional and intergovernmental affairs committee, the select committee that sat in 1988 to deal with the Meech Lake accord. I look forward to working with all members of the committee in a very nonpartisan and constructive fashion.

Mr Polsinelli: Mr Chair, I would like to join the bandwagon and congratulate you on becoming chair of this committee. Quite frankly, I share the comments that have been made previously. I think this is going to be an exciting committee to be part of. I look forward to the work the committee is undertaking.

Slightly off topic, on a question of order, your having now been nominated as chair of this committee by the House, does that mean that we have to keep you whether we like you or not?

The Chair: I am not sure. Mr Breaugh probably would have–

Mr Breaugh: Absolutely not. Revolutions are always in order.

The Chair: In that case I will toe the line.

Miss Roberts: If I might, I will join with my friends in congratulating you. I would also like to say that having been on the last committee, and I think the only one from the Liberal caucus who was on the last constitutional committee, I want to say how much I look forward to working with my friends from the third party and from the opposition. It was a very productive period of time we had together and I am look very much forward to what we are going to do with the task that has been given us.

The Chair: I think it would be appropriate for me to indicate the esteem in which I held the previous chair of this committee and to compliment the members of that committee for the report they did presented to the Legislature. I had some discussions with Mr Beer yesterday and today, and his advice to me was that the committee was a very productive committee. He assured me that I would not have to worry or be concerned about partisan politics because of the nature of the issue. I am certainly looking forward to getting on with some productive work.

With that, can we move to item 2 on the agenda which would be the striking of a subcommittee.

Mr Eves moves that Miss Roberts, Mr Allen and Mr Eves compose the subcommittee on agenda and procedure and that the said subcommittee meet from time to time at the call of the chair to consider and report to the committee on the business of the committee, that substitution be permitted on the subcommittee, and that the presence of all members of the subcommittee is necessary to constitute a meeting.

Motion agreed to.

The Chair: The next item of business is the meeting dates. I believe we have some agreement from the House leaders that the week of 19 February would be a meeting date. I know this is a meeting that was called rather quickly. Would it be the intention of the members that the subcommittee perhaps strike the agenda of that meeting at some later date? Is there any difficulty with that? So we will do that, but the week of 19 February is the week we have been assigned.

1600

Miss Roberts: Does anyone have any problem with that? The whole week?

Mr Polsinelli: Is that in Toronto?

The Chair: That would be decided by the subcommittee. The next item of business is, I suppose, what it says here, a discussion concerning requirements for legislative research staff or professional staff. Perhaps the clerk can address that issue. Is there something you would like us to do?

Clerk of the Committee: The only reason that is on there is that–perhaps I should introduce to you, for those of you who do not know him, Philip Kaye, who is the legislative research officer who has been assigned to the committee by the legislative research service. If the committee feels at any point in time that it wants to retain any further expertise or consultants, then it should make that decision.

Mr Allen: I do not think at this moment there is a need to call upon further expertise. I am presuming that when we meet in February we will have available to us a roster of people who can give us some guidance as to the history of this issue and the matters that are subsidiary to it. Perhaps prior to that event, Mr Kaye might prepare for us a paper reviewing the major studies, commissions and so on that have addressed the question of constitutional reform to date so that we have a bit of briefing even before we go into those preparatory meetings in the third week of February.

Mr Kaye: Certainly I can do that. I have already prepared some preliminary material that has been distributed this afternoon on the concept of a triple E Senate, but there have been a large number of proposals for Senate reform that do not involve a triple E Senate. I can review those proposals in addition to providing more information on the triple E concept.

Mr Allen: That would be useful.

Mr Polsinelli: I would also suggest that one of the first things the committee perhaps could do is study what–be briefed is perhaps a better word–what the existing powers of the Senate are and the relationship between the Senate and the House of Commons. I think that in looking at the whole issue of Senate reform we may want to look at the powers of the Senate and whether the powers of the Senate should be changed and whether its relationship with the House of Commons should be changed.

Perhaps in the first week in February at one of our first meetings we could have a paper, but I would rather have a sort of free-wheeling discussion with an expert on it. Perhaps we could be provided with some advance information and then have a discussion with an expert on the Senate or someone in constitutional law with whom we could discuss exactly what the relationship of the Senate is with the House and what the powers of the Senate are.

I have a great admiration for Professor Hogg, for example, from Osgoode Hall if the committee would care to invite him. At one of our first meeting days we could have that type of a free-wheeling discussion on what the powers of the Senate are and its relationship with the House.

Mr Breaugh: One of the things that has bothered me somewhat is how this committee would proceed. It is difficult. I suppose in a sense we could all go back to school for a little while and be lectured at for a week, or seven or eight years. I am not sure that would be very useful. I think what would be useful would be to have research give us a bit of a summary as to what has been written so far.

I would be personally interested in what other provinces have put forward–I guess you would have to cut it off and say those matters that they have put forward–in a rather formal way either at a conference or as a position of their government. I am not sure all provinces have done that. I am only aware of Alberta and I think some of the other western provinces have struck a legislative committee and have arrived at some kind of position paper or have been fairly formal about it.

The other problem I have is that in order for us to get very much in the way of a dialogue on

something like this, I think you are going to have to start by going to a place where there would be a reasonable number of people who would have expertise in that. I cannot think of any place else other than Ottawa. I wonder if the subcommittee might take a look at how feasible it would be to go to Ottawa for a day or so and how many people could be invited to a gathering, formal or informal, where the committee could have a chance to see different perspectives on it.

I am interested in the academic perspective and I think we could get that through research here, but I am more interested in where the other provinces are in terms of their deliberations on the matter. It seems to me that it would not be difficult to get a little briefing on the role of the Senate versus the House of Commons, but that is not going to mean very much unless we have an opportunity to speak to some people who are now senators.

Perhaps what might be useful would be to have the subcommittee take a look at what literature we should have in our hands before we start, how feasible it is to set up something in Ottawa and how many people might be willing to make themselves available to us there and what the format would be.

In my own mind, I would be unhappy if we were lectured at. I would prefer an occasion where we could sit down with some people who have already thought their positions through and we could discuss it with them even if it is rather informal.

The Chair: You raise a good point. It has been mentioned to me sort of in passing as to how formal we should be in some of these areas. The point is that some provinces have not taken a position one way or the other. You may get more information and more of a gut feeling for what is going on if you have informal meetings as opposed to having Hansard and having people state positions on record where they might be a little more cautious. That is a good point and I think the subcommittee should really look at that.

Mr Polsinelli: Could I add that I think it is an excellent point. While we would want to speak to some senators, I think it would be essential to speak to the Clerk of the Senate.

The Chair: I think that could be arranged. We could arrange to perhaps even have some of the federal government's position on this thing explained to us at the time. A good suggestion, Mr Breaugh. Any other suggestions?

Miss Roberts: May I suggest that if we are going to travel on 19 February, a budget be done. The Board of Internal Economy will be meeting on the 8 January. That is just a suggestion.

The Chair: Perhaps we could do that. I guess we can sort of send the budget around for approval and members can simply sign it and get it back. Maybe we can look at that.

Miss Roberts: I think that would be helpful, and the subcommittee could perhaps meet to give some direction for the budget as well.

The Chair: I do not know when we can meet, though. We are going to be leaving here today.

Mr Eves: I certainly would be willing to leave that in your purview as chair, to prepare the decision on the budget.

The Chair: Why do I not draw a budget up and contemplate a day or two in Ottawa in February and do the budget on that basis and go from there. If we change our mind, then we have changed our mind, but–

Miss Roberts: I am agreeable.

The Chair: Thank you. Is there any other business?

Mr Allen: I suppose we are sort of pooling ideas as to what we want to learn and know in the course of that week and the issue obviously has a number of very important layers. The first layer is simply what the constitution says, what the document says about powers.

The second is how in fact those have been used or exercised to establish precedence for the exercise or use of them or the nonuse of them in the course of the history of the Senate itself.

Then there is the whole issue of the politics in the nation around what the Senate might or might not be or do for various regions. At that point you get into the various proposals for reform and quite specific commissions and studies that have been made.

Then you have the interaction, which would be valuable, with living senators who are trying to make it work. Obviously Mr MacEachen is trying to do different with the Senate than most people have done in the past or have assumed it was possible to do. Whether that is a proper application of the powers, whether that tells you what the Senate can do or what it can only do under certain circumstances when one party happens to be in control of the Senate and it is a different party than is in control of the federal government–then you have the whole question of the intersection of all that with the Meech Lake debate. I think that is the final end-point we want to get at because that is where the live issue exists in terms of current politics.

I think we have a whole series of items we want to look at there and each of them is going to be important for us to have inside our heads as we move in on the current issue.

I like the idea of going to Ottawa. Clearly at a very early point we want to get somewhere where we can be in the country or the territory where Senate reform is at its most urgent, namely, I suppose, Alberta, and to have some very substantial hearings in the west, but Alberta is the principal focal point of that. They have done an immense amount of work on the Senate themselves. They obviously have a proposal that they are pushing and it is the clearest proposal out there at the moment.

Come February, I think we want to then look ahead to the further travel of this committee and what its schedule should be.

The Chair: I agree with you. So far, I know Alberta has a very definite proposal. In fact, they have put it into effect in some way. Newfoundland does not have a formal proposal, but you can see from some of the materials that were copied–Philip Kaye tells me he even went to speeches Premier Wells gave to Rotary clubs because you find out some things in there that are not always part of the government package.

They are different and I think we should hear from all of them so that we are aware of what is going on.

What we will do is prepare a budget. Perhaps I will speak to the members of the subcommittee, probably by telephone if I can get you over the next week or so, and we can maybe set up a meeting for some time early in January and get this under way. I will plan on the budget. I will do the budget and have it sent to your offices.

The committee adjourned at 1612.

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Wednesday 20 December 1989

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SELECT COMMITTEE ON CONSTITUTIONAL AND INTERGOVERNMENTAL AFFAIRS

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Vice-Chair: McGuinty, Dalton J. (Ottawa South L)
Allen, Richard (Hamilton West NDP)
Breaugh, Michael J. (Oshawa NDP)
Eves, Ernie L. (Parry Sound PC)
Grandmaître, Bernard C. (Ottawa East L)
Harris, Michael D. (Nipissing PC)
Hošek, Chaviva (Oakwood L)
Oddie Munro, Lily (Hamilton Centre L)
Polsinelli, Claudio (Yorkview L)
Roberts, Marietta L. D. (Elgin L)

Clerk: Deller, Deborah

Staff:
Kaye, Phillip J., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL AND INTERGOVERNMENTAL AFFAIRS

Monday 19 February 1990

The committee met at 1415 in committee room 2.

SENATE REFORM

The Chair: The committee will come to order, please.

Welcome, ladies and gentlemen, to the select committee on constitutional and intergovernmental affairs as we embark on a program of consultation on Senate reform.

Our agenda this afternoon calls for a briefing by members of the Constitutional Task Force, which is, I guess, a combination of the Ministry of Intergovernmental Affairs and the Ministry of the Attorney General, and then a briefing by the research officer.

Before we get started, I will indicate, subject to your approval, that the research officer has read the discussion paper and feels that a lot of the material would be repetitious and has asked, after Mr Cameron has finished with his presentation, if perhaps he could make some comments. Then the questions can be given to anyone, as you see fit. Is that agreeable? I thank you.

CONSTITUTIONAL TASK FORCE

The Chair: We welcome David Cameron, who is the special adviser on constitutional reform and senior representative to Quebec. Mr Cameron, perhaps you could introduce the members with you.

Mr Cameron: Thank you, Mr Chairman. With me are Peter Sadlier-Brown, the assistant deputy minister in the area of federal-provincial relations in the Ministry of Intergovernmental Affairs, and Chris Bredt, the director of the constitutional law division of the Ministry of the Attorney General. Perhaps when the discussion begins I might ask to join us my two colleagues sitting behind: Tone Careless, the senior policy co-ordinator of the constitutional law division in the Attorney General's ministry, and Steve Kennett, a researcher in the same ministry.

First, I would like to say we are very pleased indeed to be with you as you begin your consultations on Senate reform. We hope the material that has been provided and the discussion today will help frame the issue of Senate reform.

Two years ago, almost to the month, Don Stevenson and I appeared before your predecessor select committee which examined the Meech Lake accord. Much has happened since that time, but the matter of securing Quebec's adhesion to the constitutional agreement remains incomplete.

Without in any way diminishing the critical importance of that objective, the first ministers, at their last meeting in November 1989, tentatively set 1 November 1990 as the date for the first ministers' conference on the Constitution to discuss Senate reform. That was assuming the successful conclusion of the Meech Lake accord. It is, of course, in anticipation of this meeting and to prepare Ontario's participation that a select committee of the Ontario Legislature has been struck to consult and report on this matter.

You will be aware that the Meech Lake accord addresses certain issues in Canadian federalism but not, by any means, all. Indeed, the report of your predecessor committee identified nine additional areas of constitutional tension. One of the topics identified as a matter for further study was reform of Canada's Senate.

Although Senate reform was not included in the Quebec round of constitutional negotiations, the first ministers agreed in their Meech Lake discussions to examine this matter in a second round of negotiations. Indeed, part of the constitutional amendment resulting from the Meech Lake accord includes a provision to discuss Senate reform annually at the newly established first ministers' conference on the Constitution.

In addition to dealing with the continuing development on the Meech Lake accord and the other topics identified by the previous select committee, our interministerial task force, several members of which are represented here today, has been looking at the Senate as well. As an aid to the select committee, the Attorney General of Ontario has released a discussion paper entitled Rethinking the Senate, the green book that you have. Its purpose is to explore the issues surrounding the place of the Senate in Confederation and to suggest a checklist of questions which might help the committee tackle the matter of Senate reform. In short, what do we look at and

what do we look for when we consider a replacement for our present Senate?

It will be my aim to provide you with a short summary of the Attorney General's discussion paper, after which I and my colleagues on the task force would be pleased to answer any questions you may have.

Let me start by suggesting what is the nature of the exercise before you. When the previous select committee last examined our constitutional arrangements it was to deal with the very specific proposal, the Meech Lake accord, a precisely worded, delicately balanced resolution of 11 first ministers, devised as a broadly based consensus to ensure Quebec's adherence to the Constitution. To be proclaimed, the accord must be approved by each provincial Legislature and by Parliament itself, a requirement which, as you know, has not yet been met.

Members of the former Ontario select committee who are here today, and there are several, will recall the deep passion and commitment with which Ontarians addressed the content of the accord during the committee's hearings.

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The topic now before us is no less profound but it is at a different stage of development. The Meech Lake accord was and is designed to complete the achievements of the 1982 constitutional agenda. It reflects a long period of detailed discussions on both the concept and constitutional wording appropriate to provide for Quebec's place in Canada.

The issue of Senate reform, held in abeyance until the accord is proclaimed, is a matter no less important but only infrequently attended to in our past constitutional discussions, and never resolved. It has become an increasingly central priority for many of our fellow citizens in other parts of the country.

While the difference between Meech Lake and Senate reform is the contrast between a legal text and a general idea, still, in a short span of three years, members of the Ontario Legislature will have considered two of the most fundamental aspects of our national life: first, the nature of the relationship between our two great language communities and, now, the place of regionalism in national policy formulation. That this is so is testimony of the fact that the involvement of Canadians in their constitutional arrangements is much broader and more direct today than it used traditionally to be. I am sure this will not be the last time that a committee of the Legislature of Ontario addresses itself to proposals for constitutional reform.

Proposals for constitutional reform have very rarely originated in Ontario, although it is possible to imagine that this may change in the future. While successive Ontario premiers have been leaders in providing a constructive intergovernmental climate for reform, it has become increasingly important that the Legislature and the people of Ontario understand the thrust of reform proposals that arise outside of Ontario. Senate reform is a case in point. It originated in western Canada and is an objective now shared by several governments. We need at the beginning to familiarize ourselves with the context and implications of this initiative and with the alternative proposals that have been advanced.

Several observations can be made at this point, based on the discussion paper's review of our current Senate and upper chambers elsewhere. First, parliamentary systems do not necessarily require an upper chamber. Five Canadian provinces once had upper houses; all have since been abolished. In Canada at the national level, the Senate's function of sober second thought may have been overtaken by the extended Commons committee system. As an institution of federalism, our Senate's intended but unachieved function of regional representation may have been met, in part, by practices within national parties, party caucuses, the cabinet, the federal-provincial division of power and intergovernmental arrangements.

Second, upper houses serve multiple roles. They can simultaneously represent the interests of party, region and province and perform a variety of functions ranging from technical review, committees of inquiry, public exposure and even partisan challenge of cabinet initiatives. One can anticipate that the reality of multiple roles will apply as much to a reformed House as it does to the present chambers and should serve as a reference point in considering reform proposals.

Third, upper houses are normally secondary to the lower chamber. Often their word or veto is not final. Frequently too, they have a more limited capacity of policy initiative than the popular lower House.

Fourth, upper houses often compensate for the shortcomings of the lower assembly. They represent constituencies or values deemed to be underrepresented in the design of the lower House. Commonly, they represent communities of interest that are territorially situated, although in Great Britain the House of Lords represents an establishment interest. You might say it represents property but not territory.

Fifth, upper houses do not exclusively represent a particular constituency. They are set in a network of other institutions that may perform similar functions.

Let us turn now to the mechanisms currently available to provide for regional input in national policy decision-making. Clearly, the impulse for a reformed Senate is the perception that less populous regions of Canada lack adequate influence on federal decision-making. Your hearings will examine this concern and weigh its character. This we do not attempt to do in our discussion paper. Rather than look at the substance of regional grievance at this point, we choose to identify what mechanisms, other than the Senate, are available to express and accommodate regional interest. But just as surely as the present Senate has failed to do this, so also have other instruments sprung up to execute this function. We should bear this in mind in considering proposals for Senate reform.

We have identified constitutional, intergovernmental and parliamentary mechanisms. First, there is federalism itself. The Constitution divides power between federal and provincial governments and thereby takes out of the national Legislature matters of particular interest to regional groups. These achieve majority status in provincial legislatures where otherwise they would be a permanent national minority.

Second, first ministers' conferences operate on the basis of the equality of governments and provide a forum for discussing areas of mutual concern. They provide a national public forum for our regional perspectives and for testing federal sensitivity to all regions.

Third, Supreme Court appointments by convention, and in future by the Constitution, assuming Meech passes, have a regionally balanced character.

Fourth, day-to-day intergovernmental contacts provide the major vehicle for harmonizing regional and national interests.

Fifth, in the national Parliament, provincial and regional interests are represented through the device of regional ministries in cabinet, regional caucuses of national parliamentary parties and regional advocacy by individual members on the floor of the Commons.

Few would dismiss the significance of these existing measures, but for provinces of modest population or with economies differing from those of central Canada, there is perceived still to be insufficient influence upon decisions made within the national Parliament itself. In our work, we neither represent the positions of other governments nor put their claims to the test, except to note that there are many areas of exclusive federal jurisdiction–thus not subject to formal intergovernmental negotiations–where decisions of a central government can have significant cost and burdens for particular parts of the country. A new second chamber might complement existing arrangements by strengthening the influence of less populous regions of the country in the policymaking at the federal level.

It is clear, however, that Senate reform cannot be assessed exclusively on the basis of its capacity to improve regional accommodation. Institutional change of this magnitude is likely to affect the country's national values, its parliamentary system and its federal framework.

To take the question of national values first, I will discuss three areas by way of example.

First, achieving a wholesome balance between national unity and regional diversity has long been the hallmark of Canadian identity. Political developments and constitutional reform have brought one or the other into prominence over the years. One would want to ensure that a reformed Senate knitted these two values together into a balanced expression of the country's interests.

Second, equality is a concept prominent in the discussions of Senate reform. We note in the paper that in addition to equality of regions or provinces, Canadians expect the Constitution and national institutions to sustain or enhance the democratic equality of citizens, legal equality before the courts, economic equality of opportunity and equality of nonregional collective identities based, for example, on language, gender or aboriginal status. Can or should a second chamber reflect only one dimension of equality, or are multiple objectives required?

Third, global awareness is not simply a reflection of contemporary Canadian sensitivity to trade or environmental issues. Since Confederation, relations with the world have been vital to the prosperity of our open, resource-based economy. This requires not just a decisive national government but also one capable of fostering intergovernmental consensus and provincial compliance with international obligations. Might a reformed Senate have a role in this field?

We would regard these and other national objectives as easy to lose sight of when the focus of reform discussion will be on the aspiration of regions within our country. We would expect that a new upper chamber will need to be capable

of meeting multiple obligations simultaneously rather than a single objective optimally.

Next, our parliamentary system: We start with the premise that Canadians will want to retain their parliamentary system with responsible cabinet government accountable to the majority in the House of Commons through the party system. This stands in contrast to the American congressional system which has correspondingly looser party discipline because the active governing is diffused across the office of President and two houses of Congress bound by constitutional provisions of checks and balances.

We do not judge whether the concentration of power in the Canadian executive or its dispersion in the American system makes for better government. What one gains in decisive action in the one might be contrasted with the broad, if slower, consensus constructed in the other because of the obligation to negotiate widely. But we do note that commentators conclude that the greater independence of the American legislator and, conversely, the greater collective responsibility of a cabinet-led system in Canada have consequences for the advocacy of particular interests and the likelihood of national governments sponsoring broadly based collective public policies.

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Specifically, Canadian governments achieve office as a result of parties basing their electoral appeal on as broad a footing as possible. In contrast, American legislators are returned through success in individual, local campaigns in which party label and national focus are but two of many factors. Careful attention to the impact of Senate reform proposals on our parliamentary system is clearly essential.

As to federalism, logically speaking, reform of policymaking within federal jurisdiction should be analytically separate from the relationship among governments provided for by federalism, but most studies conclude that in fact there is a linkage. Effective regional advocacy in an upper House tends to displace the influence of regionally situated politicians. It may be in the light of this that some reform advocates in Canada have proposed that certain federal elements be enshrined in a new upper House, for example, drawing senators from provincial constituencies in provincial elections, representing provinces, and not regions, equally and providing for provincial, not party, caucuses in the new chamber. We would suggest that the distinction between stronger regional representation within the national Parliament, on the one hand, and provincial government control over federal policymaking, on the other, needs to be clearly drawn in assessing proposals for Senate reform.

Finally, our consideration of issues raised by reform of the upper House turns to a major force that could come to influence all the factors I have mentioned earlier: party allegiance. If senators are subject to strong party affiliations, it is possible that a new upper House would once again be unable to represent the interests of the less populous regions in Parliament effectively when national policy is formulated. If party, on the other hand, is weak, senators could be independent agents, possibly challenging the confidence that cabinet places in the Legislature to refine, yet to pass, its legislation. Here, again, our aim is not to perform a detailed analysis of this question, but to suggest that an accurate forecast of how the party system will operate in a reformed upper chamber will be an important factor in assessing whether the new institution will achieve its stated objectives.

These are our opening remarks. I hope that the discussion paper that has been tabled today will be helpful to you in your consultations and the work of the committee. We would be pleased to discuss some points with you now.

The Chair: Thank you. Perhaps we will go according to schedule and perhaps Mr Kaye can make a couple of points and then we will have questions later.

Mr Kaye: I thought I would briefly go over the way my paper is organized. This paper was prepared as a result of questions which were raised at the committee's meeting in December. It provides an overview of the structure of the Senate and recent proposals for reform. Part of the paper overlaps with the background material in the ministry's discussion paper, particularly when it comes to summaries of some of the reform proposals.

The first part of the paper highlights three original purposes of the Senate, the protection and representation of regional interests serving as a counterweight to the popularly elected House of Commons, and the protection of property interests. Next there is an examination of certain provisions in the Constitution Acts of 1867 and 1982 relating to the composition of the Senate, how senators are appointed, what qualifications they have to satisfy, the internal procedures of the Senate and the powers of the Senate, especially as they compare to those of the House of Commons. The section on the Senate's legislative role focuses on the passage of bills by

the Senate and what happens when the Senate and the House of Commons disagree on a bill.

The second part of the paper looks at proposals for reform. These proposals generally seek to make the Senate more effective as a voice of regional or provincial interest. They range from abolition to a reformed appointment process to the election of senators. Proposals for a different kind of appointment process but not an elected Senate generally have fallen into one of two categories. The first category would see the replacement of the Senate by a House of the Provinces whose members would be appointed by and represent provincial governments. The Ontario Advisory Committee on Confederation in 1978 and 1979 made this kind of proposal.

The second kind would see half the Senate chosen by the House of Commons and half by provincial legislatures. This kind of Senate was recommended by the Ontario Legislature's select committee on constitutional reform in a report that was tabled in 1980.

In the 1980s the discussion on Senate reform has shifted to the idea of an elected Senate. In my paper I summarize five of the more significant proposals for an elected Senate. They are, first of all, a report prepared for the Canada West Foundation in 1981, a report of the special joint committee of the Senate and of the House of Commons on Senate reform in 1984, the report of the Alberta select special committee on Senate reform in 1985, the Macdonald commission report, also in 1985 and a constitutional paper from the government of Newfoundland in 1989.

I have designed the summaries to take into account the three broad issues raised by the triple E Senate proposal, the three issues being the selection of senators, the representation of provinces and territories and the powers of the Senate. Accordingly, the summaries deal with the following questions: Why should senators be elected? What representation should provinces and the territories have in the Senate, and why? Finally, what powers should the Senate have regarding ordinary legislation, money bills, language legislation and constitutional amendments?

The summaries do not cover some issues, such as, when should an election take place, how long should senators be elected for and what size should constituencies be? These questions are addressed in appendix C to the paper which contains material prepared by Gordon Robertson of the Institute for Research on Public Policy. I have also noticed that the ministry discussion paper contains detailed summaries of these documents.

The final section of the background paper deals with government proposals for reform. The triple E Senate concept has the support of several provinces, especially Alberta and Newfoundland. One point that should be stressed is that although proponents of a triple E Senate agree that the Senate should be elected, equal and effective–and by "effective" they mean powerful –they would not all implement the concept the same way. I think that is best illustrated by looking at what triple E supporters say about the relationship between the House of Commons and the Senate with regard to ordinary legislation.

The report prepared for the Canada West Foundation says that the House of Commons should be able to override Senate amendments by an unusual majority. The Alberta committee on Senate reform would allow the House of Commons to override Senate amendments by a vote that was greater in percentage terms than the Senate's vote to amend. So if the Senate voted 60 per cent and the House of Commons voted 61 per cent, the House of Commons could override the Senate. The government of Newfoundland would not allow the House of Commons to override the Senate at all when it came to ordinary legislation.

There are four appendices to this paper. In appendix B there is a list of the members, officers and committees of the Senate. There are two lists of members. The first is by province and the other is by seniority, which gives the political affiliation, the date of birth, the normal retirement date, the date appointed to the Senate and the Prime Minister. Currently, in the 104-member Senate there are 56 Liberals, 34 Progressive Conservatives, 4 independents and 10 vacancies. There is no requirement to fill a vacancy within a prescribed time period.

Just with respect to the joint committee for the scrutiny of regulations, which is one of the committees listed on page 12 of appendix B, the Ontario Legislature's standing committee on regulations and private bills two years ago heard several witnesses who were associated with that joint committee. They included former Senator Godfrey, who had been a co-chair of the committee; Francois Bernier, who was general counsel to the committee, and Graham Eglington, former counsel. The Ontario committee considered their evidence to be quite helpful in framing recommendations on the subject of regulatory reform.

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Mr McGuinty: First of all, I have not had time to read the background statement from our research office, and only in part read the green paper from the Attorney General's office. But what I have read of it, actually up to page 23–it is so dark in here I have trouble reading it even at this time–I find the background very informative and I really commend and thank you for it.

Particularly in the opening section, you do the best of all possible things. You do not try to give the answers, but you pose the questions. I think that is one of the problems with Meech Lake and so many other issues, everybody flailing around, running through the streets with all the answers when he really does not know the questions.

I think we are in for a very fascinating week. I was talking to my old friend Allan MacEachen a few days ago and he anticipates our coming. Allan tells me that the days when he leads the prayer in the Senate, the prayer is, "Now I lay me down to sleep."

I think one thing we have to be aware of, and apart from what might be construed by some oversensitive zealot as an imprudent reference, we want to ensure that our discussions are not a flashpoint for Meech Lake haggling.

The fact is that our Premier's concern for Meech lake, our government's concern for Meech Lake, should not be identified with this particular activity that we are involved in with regard to Senate reform. Maybe I am being too sensitive here myself. It is on the top page 17. "If regional or provincial identity were to become a basis for representation in the Senate, this duality and Quebec's distinct society would influence the design of new national institution."

I know that Quebec is a distinct society. I have lived in it long enough and on the border of it long enough. I think most people would, by virtue of what is there, recognize it as such, but that might be a flash-point for some. I do not suggest this as a criticism but simply as just the one little "by the way" innuendo in the whole statement that could be given to relating your statement with the noted concern for Meech Lake.

Just like days when I was on PhD boards examining candidates, I always had to try to illustrate I had read the thesis, even if I had not, there are a couple of minor points I would like to make in passing. On page 2, at the top, the second line, "This paper does not seek to provide a perspective or a position on behalf of the Ontario government," and a statement on the following page, the second sentence at the top of page 3, "That the continuation of the Senate, as presently constituted, cannot be justified is an observation we share with those who propose reform." There may be, again, a perceived contradiction there, but again, I think that is a bit haggling.

On page 5, I am just dying to see the look on Allan J.'s Cape Breton puss when I refer to him as "unrepresentative, unaccountable, unrestrained." I guess you could add a few more Us there, useless and unnecessary and so forth. I know at one time I met him shortly after he was appointed and he said he felt like he was stall-walking. That is an old Ottawa Valley expression. You take a brisk colt off the green grass in spring and put him in a box stall for a while. He just walks back and forth to try to get rid of his energy. Speaking in the Senate is like speaking in an empty cathedral.

On page 7, "As a component of the parliamentary form of government, second chambers are intended to represent constituencies or values deemed to be underrepresented in the design of the lower House." I presume that these days the Senate would propose to represent the poor, given the property-holding requirement which is requisite for appointment to the position.

On page 22, there is a statement I find difficult to understand, the result, I am sure, just of my sheer ignorance in this area. It is in paragraph four: "In practice, however, the experience with upper houses in other federations suggests that the status of provincial (state) governments in national policymaking is intimately linked to the status of elected senators. Most commentators suggest the relationship is inverse: The more effective the state's representative in the national legislature, the weaker the influence of the state government upon the national government. For this reason, advocates or opponents of Senate reform will often assess it in terms of the possible attenuation or encroachment of the provincial government perspective in national issues."

The first few points I raised were simply nitpicking, almost nonsense, but this is something that I really cannot understand.

Mr Cameron: The point that is being made here is that the stronger the representation at the national level of the members of the upper chamber, the more effective they are in reflecting regional concerns in the national policymaking function, the more likely it is that the state representatives in the state itself will be less powerful in their influence on national policy.

I think one could look to the United States for an example of a situation where the federal system is not as vital, perhaps, as Canada's, and

that may relate to the fact that, in other words, the organization of state governors has in no sense, I think, the profile in American federal politics and in American national politics that the association of premiers in Canada has.

Mr McGuinty: Premiers, yes.

Mr Cameron: The contention of these commentators would be that this is not unrelated to the strength of American senators in the national legislature. And indeed, one of the elements of debate, if one looks at the discussions in Alberta, has been very much on that point. The question of what one is seeking is a stronger representation of the province as constituted within the framework of a provincial government, a stronger representation of that government interest in national policymaking or a stronger representation of Albertans collectively in national government. There has been an ongoing debate about where one should put the emphasis.

By the way, I think, and this is the view shared by my colleagues, it is an excellent paper. If we had had it sooner, we could have reduced the dimension of ours, I think, considerably. I think that is a point that he was alluding to in his comments. I think that is the sort of issue that is being addressed there. Does that clarify it?

Mr McGuinty: It does very much. It is just my own ignorance of the American scene, I guess. Once again, I want to thank you especially, not for the answers you give, but for the questions you raise. I think we are going to have a hell of a lot of fun this week having some of the most knowledgeable in the business respond to the wonderful points that both the researcher and yourself make. I really thank you sincerely for it.

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Mr Breaugh: I have had a chance to kind of read more than I ever wanted to read about the Senate. We have some more information from Alberta on its position and its proposal. One of the things that I am struggling with a bit is, in reading the compilations that have been done here, it does seems to me that everybody is grinding an axe here but not making an argument that we need a Senate. There is very little that I have found where someone has put forward a clear idea of the need for a Senate in Canada, that things cannot be done in any way other than by means of reforming the Senate or leaving it in place as it is.

My concern is that most of us in my community–we have at least four levels of government working on us that we can identify, and there are probably three or four more that we do not know about yet, so you cannot make a case that we are not governed. If anything, we are overgoverned. We have a local council, a regional council, a provincial government, a federal government, there is the Senate, there are two school boards, and three if you count the French language board. There is a PUC and a conservation authority. There are scads of them. What I need is to have someone provide an explanation as to why we should have a Senate. What is there that can be done in that chamber that cannot be done somewhere else?

One of my concerns is, I read through the documentation here because I see people attempting to resolve some other problem and the Senate is the vehicle. Can you help me a little bit? If we did, for example, become very supportive of the triple E Senate–and I think we would all have to admit that it seems a little wildly impractical, to me. But in Alberta they actually did elect a senator province-wide. I am not so sure we want to do that, but it can can be done. I am not so sure that the guy is in the Senate yet or ever will be, but if you just want to elect somebody, you can do it. What is it that can be done or should be done that requires the second chamber? Can anybody give me some inkling of that?

Mr Cameron: I think you have identified the mainline argument that is advanced, which is really premised on a sense of regional alienation or a lack of power over national policymaking, and the contention is made not just by westerners but by some people in the Atlantic region, clearly people outside central Canada, that what is lacking is an upper chamber that reflects to a greater extent than is currently the case the smaller units in the federation so that they will have a much stronger impact on national policymaking. The implication is that if you had that situation, you would have better–ie, policymaking more congenial to the whole country than you have now and, I presume, regional grievances and regional alienation would diminish. That is the line of reasoning.

We have said in the paper and in the statement that there are a variety of mechanisms, some of them quite significant, for dealing with the question of regional impact on national policymaking, but clearly that has not been something which the proponents of Senate reform find compelling. I think that part of the argument, or part of the basis in which the argument is made, in all likelihood, is that it is hard to think of a federation that does not have an upper chamber.

Now, that is not in answer to your question or a final argument for an upper chamber in the Canadian federal system, but I think it sort of buttresses the case as a point of departure. I think you raise a very significant question. The framework within which it is advanced is as I have described it, I think, and one could argue that the test then might be, apart from its incidental effects and ancillary effects on the functioning of the parliamentary system, will it, in fact, address the grievance that people are advancing as their principle concern?

Mr Breaugh: May I just interrupt you there for a minute? The other real stumbling block that I have is that it sounds very appropriate that we should be equally represented somehow in something called a Senate, but do any of us really mean that the province of Prince Edward Island should have equal numbers of people in the Senate of Canada as the province of Quebec? If we all set out today to design a nation called Canada, and we would have an awkward piece of geography to work with, I doubt very much that we would design provincial governments as we now have them, reflecting something that existed a long time ago, and we would have a tough time, any one of us, I think, saying, "Well, if you accept that Prince Edward Island, with its population base, ought to have a senator of its own, then I could give you just as good an argument that the city of Oshawa, with an equal population base and a larger part of Canada's economy, also deserves its own senator, and I know who that should be." I will leave a little mystery at the end.

Is that not regionalism? Is that the heart of what people want when they talk about Senate reform? Because at the heart of that would be, if you could give a good argument that a smaller province like Prince Edward Island is not well represented in the Parliament of Canada because it does not have enough members and we should do something to create that balance so that its concerns would be more accurately reflected in the Canadian nation, you could certainly give a much stronger argument that the residents of Baffin Island have exactly the same problem and therefore they should be represented there. How far do you extrapolate this?

Mr Cameron: I think for many people who are arguing Senate reform, the point of departure is the existing federal setup that we have. I have certainly had Albertans say to me: "We are prepared, as Albertans, to have Prince Edward Island enjoy a same number of senators as we would enjoy in Alberta. We are asking that you would accept the same principle with respect to Alberta vis-à-vis Ontario." There are certainly people who are very comfortable with the notion of equal representation. Indeed, that is one of the bases of the triple E.

Mr Breaugh: But off the status quo, though.

Mr Cameron: That is right.

Mr Breaugh: I have not heard anybody argue that "Well, we are just accidents of history. The provinces of Canada as we now know them, as have now been identified, are not a real measurement of or a real indicator of the Canadian population. There is no attempt made to distribute by means of population base or geography or anything. This is just the way it was when we entered Confederation.

Now, if you want to get equal about this, and we are being as generous as we can in saying, "Well, Alberta and Prince Edward Island get equal representation," how about those people who live in some far distant part of this country with the same number of people, who just were not around and identified as a province 100 years ago? How do they get their regional interests brought into the picture?

Mr Cameron: Two important shifts have occurred, somewhere around 1980-82, in this whole debate. I think one is that people move quite sharply away from a concept of regionalism in discussing institutional change and, I think more broadly than that, the way the federal system should operate, to the assumption of provinces, with equality among the provinces, as the basic principle.

If you go back to the 1970s and you look at the material on British Columbia's proposals, they were being creative about "region," with the aspiration of defining their province as a specific region, and then having five regions of Canada as the building blocks for Senate reform. So that was still at least a plausible argument to advance in Senate reform discussion.

I think that a working assumption that a great many proponents of Senate reform have now is simply provinces, and that is part of a broader conception that federalism is a system which is composed of provinces. Provinces are equal; therefore, in an upper chamber, you have equal representation by provinces. That is how the line is made. So I would say that the notion of regionalism and other forms of going behind or going beyond the structure of provincial jurisdictions now is a harder task than it would have been even in the 1970s. That is one change.

I think the other change that has occurred is that if you look at the list on page 51 of the

various–a dozen or so–Senate reform proposals, the first half, which are up to about 1980, are all–and this was a point your researcher made –nominations by governments, or possibly by a Legislature, but not direct election. After 1980, virtually all the proposals, certainly all the ones on that list, are calling for election. I think that is another shift that has occurred within the past decade, where the discussion now is very broadly based on the assumption of election, not governmental nomination.

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The implication of that is a move away from the notion that provincial governments should have a place and a position constitutionally within the national policymaking function towards the notion that people otherwise constituted, ie, in provinces, for the most part, or regions, should themselves rear up in the upper chamber those who will represent them in that capacity.

Mr Breaugh: I want a chance to pursue these a little more; one final little kick at the cat then. Let's take Meech Lake as an example. Three of the smaller provinces, in terms of population base, have managed to effectively, at least so far, put the kibosh to the Meech Lake Accord, despite the fact that all of the heads of provincial governments in Canada at one time thought this was a socko idea. Three of the smaller provinces now say it is not so socko. In fact, the latest one to voice a negative opinion on the matter has on the record both sides of the coin; approved it under one government and now has a motion that says, "If you don't do something better than this, we will disapprove of this."

I cannot envisage anything that you could do that would give provincial governments, in particular, more power than they now have. They have an ability to change the Constitution of the country, supposedly; they have an ability to reverse that decision, which they are doing at the moment. Is there a need to address regionalism or the powers of the provinces any more than what we now have?

Mr Cameron: I think it is a good question to put to the people you are going to be consulting with.

Mr Breaugh: Okay.

The Chair: On that note, we will move on to Mr Allen.

Mr Allen: Just a footnote to Mr McGuinty's observations: On page 17, I think I understand what you are saying there, which is essentially that in light of all these numerous equalities that one has to somehow accommodate in a federal system, if you move in the direction of a Senate in which you at one and the same time are giving so-called regional representation à la provinces, and one of those provinces turns out to be also a "distinct society," you have two equalities that are being accommodated in the same chamber and therefore you have got a problem; namely, the Senate itself is not going to reflect the second equality of distinctiveness unless it makes some other accommodation. Okay?

Mr Cameron: That is right, and its premised on the assumption that Meech would pass, which then does give constitutional standing to the "distinct society" clause.

Mr Allen: Yes. Following up Mr Breaugh's question a little bit, there have been select committees and there have been things said about the Senate. Has the provincial government ever stated a position, even by broad implication, with respect to Senate reform options?

Mr Cameron: We might check a couple of reports of the advisory committees, which might have a brief description of those and how they were disposed of, but my recollection is that they did not. I think the position of the current government is to welcome constitutional reform discussion dealing with the Senate in round two, once Meech Lake has passed, and to acknowledge that some greater representation of regional diversity in the upper chamber is an appropriate objective for Senate reform. I think beyond that, as I understand the present government situation, it has not gone. You were thinking of earlier cases.

Mr Allen: Anything on record, basically, that is a significant force.

Dr Careless: The most recent statement on behalf of the Ontario government was made by the Attorney General the last time he came before the predecessor of the select committee and summed up the remarks of the Ontario government. At that point he simply noted this was an urgent matter that had to be readdressed, and if the regional component was a matter of some concern in Canada, it would require attention.

Mr Allen: So there seems to be at least some commentary that reveals at least some sympathy and perhaps a bit of a bias towards reform of some kind, but no content, essentially, in terms of the direction that should take.

Dr Careless: Correct.

Mr Cameron: That would be correct. The only element really of content there would be this notion that one would move towards recognizing

the less-populous regions and territories more fully than is the case in the current Senate.

Mr Allen: Yes. Understandably, you had some difficulty responding to the direction of some of the questioning that Mr Breaugh, the member for Oshawa, put to you, and I appreciate that.

I wonder, in the course of your research on the Senate, whether there is anywhere any discussion of whether a reformed Senate in any of the significant options that are being discussed at this point in time would, in reality, yield for the disaffected parts of the country that are promoting Senate reform most strongly a set of circumstances in which they really did feel that somehow they had been able to accomplish their objectives; in other words, not just simply the strengthening of a voice in federal affairs, which of course does placate a little bit, but that feeling of alienation or being in the margins or not having been attended to well enough, but whether that incorporation in the process itself was really at all likely in the foreseeable future to yield differential policies that would make a substantial difference regionally, would yield the kind of happiness that would say: "Okay, the job's done. We're happy. We're there." I think one could get involved in this process and walk into a real trap in a sense of trying to accommodate objectives that really are virtually unreachable.

Is there anything in the literature that sort of assays that, attempts to sort of run through that scenario and come to some conclusions?

Mr Cameron: I might call on Tone Careless to make a comment on that, but there certainly is one very contemporary assertion that has been made by the Premier of Newfoundland–I have heard this on more than one occasion–where he uses the example of the reconstruction of the Department of Science and Technology, which he says is also responsible for regional development in Ontario and Quebec as an example of an unacceptable institutional or ministerial arrangement, structure-of-government arrangement, from the point of view of the other provinces of the country, which have their own dedicated regional development functions outside of industry, science and technology. He says the link between Science and Technology and regional development for Ontario and Quebec bundles everything together to the advantage of those two provinces.

His contention is that Senate reform, as he would see it, would lead to a ventilation of that kind of issue and the contesting of that in ways that would be productive, presumably that one would not have exactly that sort of outcome. That is sort of a concrete example of something he finds unacceptable, which he thinks would be better handled with the reformed Senate. Whether it would, in fact, or not is one to assess in terms of his proposal and others.

Mr Allen: Yes. That moves in the direction of an answer. I suppose my question presumes also the next step, whether a reformed body of that nature, given the nature of the economic base that exists in the regions in question, would ever, under any set of circumstances, be able to turn it around to the point where the disaffection would go on.

Mr Cameron: Yes, which is a much more profound issue. Perhaps Tone could comment on some of the studies that have been done.

Dr Careless: There is a study to the Macdonald royal commission done by professors Smiley and Watts, who looked specifically at the issue of the need for Senate reform and its alleged impact. I might just refer to a couple of observations they make, although I am sure the committee would want to talk to them directly as to where they feel they are at this point in 1990.

They conclude on page 32 that they think there may well be very few issues dealt with by the federal government where the interests of westerners and Québécois are juxtaposed to those of the rest of the nation. They then go on to say that they argue that the analysis we have surveyed tends to explain too much about the Canadian political system and, thus, to exaggerate the extent to which this system is susceptible to change through Senate types of reform. I am using my own words in some instances here.

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They say at another location, "Intrastate thinking has exaggerated the influence of the regional unrepresentativeness of central institutions in determining the federal-provincial balance, as well as the capacity of Senate-type reforms to shape a new balance."

Now, I would not want this to represent the consensus out in the community. Just to balance this observation, let me suggest that if you were to talk to folks from the Canada West Foundation, they might well be able to give an example of how the national energy policy could have been differently configured.

I have heard the argument from Canada West as well that if you looked at the proposed child care program that the federal government was going to introduce, it had an intergovernmental

component that would continue to be negotiated between governments whether or not you had Senate reform, but there was a component in which the federal government would exclusively apply its own criteria and what people would be eligible at what income level.

It could be argued, as I have heard people make this argument, that considerations of a rural community–farm wives rather than wives living in an urban setting, the use of co-op for the care of children rather than using urban institutions like schools and so on–all of those factors might have been done differently if there was a different kind of input as the material went through the legislative process in Ottawa.

Mr Allen: I raise the question essentially to alert us, I think, to the basic issue in the whole question of Senate reform that we are going to have to think about fairly carefully. There is another question in here somewhere, but you can come back.

Mr Polsinelli: Mr Cameron, I was wondering if you could talk somewhat on the Senate's veto power and the discussions that led to the constitutional amendment or the Constitution Act, 1982, which limited that veto power on constitutional matters to a suspensory veto for 180 days.

Mr Cameron: I think you will see in the variety of proposals that have been advanced, there are different positions taken with respect to the veto power, whether there should be a formal and complete veto on certain issues or not, whether it should be suspensive, how limited and so on.

The formal powers of the current Senate have been very little abrogated. This is one case in the face of Senate reform, with the 180-day veto, and I think it was premised really on the recognition of the difference between the lower House and the upper House and the fact that the lower House was based on election and representation by population, and ultimately its will with respect to its role in constitutional reform ought not to be thwarted by an upper chamber which was not elected. I think it was in that context that the veto was introduced during the 1980-82 round. Does that do?

Mr Polsinelli: I was interested, I guess, in the aspect where you were talking about the conflict between the lower House and the upper House and the lower House feeling that its will in attempting to amend the Senate was being thwarted by the Senate–but I guess prior to leading up to the Constitution Act, 1982 and that particular amendment there must have been debates within the Senate and in the lower House dealing with this particular conflict–and if you remember or if there is anything written with respect to those debates and the types of issues that were raised at the time. I guess I am looking in the context of Bill C-60, which was proposed in 1978, and then from that point on to the actual time that the Constitution Act, 1982 came into effect.

Mr Cameron: My judgement would be that controversy and discussion concerning the role of the Senate tends to arise when a different party is in the majority in the upper chamber as compared to the lower chamber. For many, many years during the post-war period that was not the case. I do not believe there were many instances of conflict of that kind. There were a few in the 1960s. There have been some in the 1980s. You will notice in the material that Mr Crosbie–I think it was in 1985–in reaction to some initiative taken by the upper chamber developed a proposal to deal with its capacity to block the will of the lower House. I think that is one of the contexts in which this issue arises.

I think the deeper matter for concern in looking at reform proposals is really what effect one wishes to have on the functioning of parliamentary government at the national level as we understand it, because I think if one disperses the power and begins to give substantial power that will be used to the upper chamber, you begin to disperse the accountability function of the two chambers vis-à-vis the cabinet. That could quite profoundly change the nature of your parliamentary system. You will see that discussed again and again.

Mr Polsinelli: I accept that as an answer, but in your chronology of Senate history in your discussion paper, you look at June 1978 when the federal government introduced Bill C-60 which proposed substantial reform of the Senate, and then in December 1979 the Supreme Court–I assume that that is the Supreme Court of Canada–in a unanimous decision declared that the bill, I guess, would be ultra vires, the federal government acting alone.

What caused that particular bill to become an issue before the Supreme Court of Canada? I assume that bill did not have the support of the Senate and at that point there must have been a conflict between what the senators felt their role was and what the federal government felt the lower House's role was–

Mr Cameron: And the provinces.

Mr Polsinelli: –and the provinces. If I recall my history, the Liberals had been in power for a

substantial period of time. I am not quite sure what the Senate composition was, but in terms of the political composition of the lower and upper houses, they were probably fairly similar.

Mr Cameron: Yes, I think that is the case, but there the contest was between the provinces and the national government as distinct from between the upper and lower chambers. If you are interested in a bit of detail on the court case, Chris Bredt might come into that.

Mr Polsinelli: Yes, that would be interesting too.

Mr Bredt: What happened was that there were concerns that had been raised both by the opposition and by the provinces about the ability of the federal government to unilaterally take steps to either abolish or reconstitute the Senate. It was really those concerns that led the government to refer its bill to the Supreme Court. The Supreme Court was really asked two types of questions: One was, can we take away its veto or abolish the Senate? The other was, could we start having a House of the Provinces concept? Could we start having appointments to the Senate being made by provincial governments?

I think the thrust of the decision from the Supreme Court in both instances was, "No, you cannot do that, and the reason you cannot do that is because there is a provincial component in the Senate." The Senate, as it was originally constituted, was divided into divisions that represented Ontario, Quebec, the maritime provinces and later the west. Because of the regional representative nature of the Senate, if you wish to amend the Constitution so as to affect the composition of the Senate, you had to do it in the traditional way, which was to get a bill passed through the Parliament in Britain. You cannot do it unilaterally through the Parliament.

Mr Polsinelli: The court at that time, recognizing that there was a provincial component in the Senate, did it specify or stipulate or was there any indication what extent of provincial involvement was necessary in order to make the request to the Parliament at Westminster?

Mr Bredt: There is a provision in the Constitution in section 91, I believe, which gives the federal government the power to amend the Constitution to the extent that it affects just the federal government. That is a synopsis. There is actually quite technical language about what they can and cannot do. The issue before the court was whether or not this was something that just affected the federal government. The thrust of the court decision was that this went beyond just affecting the federal government and thus you had to go through the traditional procedure.

The other part of the question you are asking, which is what the provincial input was, was considered by the court in the reference when it looked at the original Constitution Act of 1982. They held that conventionally there had to be substantial provincial support, but legally there was not that requirement, which resulted in the second round of negotiations that got nine provinces on board and it eventually went to Great Britain.

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Mr Polsinelli: I am familiar with that Supreme Court decision, but I was wondering whether the courts, earlier in dealing with this, had basically said the same thing or whether they had said in a more definite way what the provincial interest was.

Mr Bredt: No. They were very careful not to say what the requirement for provincial support was. The only thing they noted was that this did not fall within the category of topics under section 91 that the federal government could do simply by passing an act in the Parliament of Canada.

Ms Oddie Munro: I am interested in the process of the Senate and I am looking at pages 48 and 49 and asking if you could further explain what is stated here. In the deterioration of the Senate, if in fact it has deteriorated, we are looking at a sort of rubber-stamping of legislation or minor amendments going through and hopefully no obstruction. I am just wondering why or if there have been any substantive discussions or issues on policy. I cannot accept that when people go through legislation, issues of policy would not come forward that could be articulated. That is my first question.

The second is, when you take a look at prestudy as being an example of process, monitoring, MacEachen apparently dropped it in 1984. Can you tell me why he dropped it? If he dropped it, was it before the 1983 study when Senator Pitfield was chairman? I do not understand why, unless MacEachen is against or at least does not want to see—to me prestudy would mean that the Senate would be looking at enhanced powers. Why he would drop it I do not understand.

The third question is the accountability of the Senate. They apparently give reports and appear perhaps before a Commons committee. They may or may not appear or invite cabinet members in. What is the accountability function? Is it subject to the auditor, for example, and does it

receive as much public information as the Commons would?

Essentially those are the three questions, just on the process.

Mr Cameron: I might pick up on a couple of them and then turn it over to either Steve Kennett or Tone Careless to expand on it.

I think the Senate over the years has done some very significant work in the policy field. If one takes, first of all, the committees of inquiry, some have been quite influential in shaping public debate and giving something a priority that it might not have had before or providing what is deemed to be helpful input in the framing of national policy subsequently.

I think there are instances where in the actual legislative process of Parliament itself, senators participate and make a significant contribution. For example, in the 1980-82 round of the constitutional discussions, it was a joint committee of the Senate and the House of Commons that held the hearings and listened to Canadians talk about the Constitution and the proposals for change. So there have been those roles being performed. I think its role with respect to altering legislation in the normal circumstances is very limited.

On the prestudy, if you are seeing Senator MacEachen it would be a good question to put to him.

Ms Oddie Munro: I understand it is very difficult when you have a summary statement like this, since I am ignorant of much of the background, but I was particularly interested in the prestudy mechanism and I am wondering why MacEachen would have dropped it.

Mr Cameron: I think it was conceived to make more efficient the processing of national legislation, so that if one gave to the upper House an opportunity to look at that in advance and make comments, which the lower House, the lower chamber in the government, could take into account or not as it chose, one could clear away some of the roadblocks to rapid passage subsequently. It was not so much, I think, an effort to enhance the power, although it may have enhanced the practical impact of Senate activity with respect to legislation, but not really to enhance the power. I might ask, Steve, if you have anything to add.

Mr Kennett: That is right. The prestudy was a means of examining legislation in the Senate before the legislation was formally introduced in the Senate. It did not actually enhance the formal powers at all. It was designed primarily to avoid a situation where legislation would be rushed through the Senate at the end of a session without time for study, after passage in the House of Commons, in the dying days of the Senate. It gave them a chance to look at it earlier, but it in no sense increased the power. The option–I am not exactly sure what Senator MacEachen's reasoning was–not to have prestudy merely means that the Senate takes its time and examines the legislation after it has gone through the House. It is no diminution of power at all. It just relates to the timing.

Ms Oddie Munro: I was just wondering whether he had thought that in some ways that would have been a conflict as far as standing back and taking a look at a body of knowledge at one fell swoop was concerned, rather than having several opportunities to give an opinion.

Mr Kennett: I think there is no doubt that prestudy was an adaptation of the formal constitutional procedure, and I think there was some debate whether that was technically appropriate or technically following the procedures. In that sense it was an informal mechanism, and if you wanted to follow the letter of the law, perhaps the sequential process without prestudy follows the conventional pattern.

Mr Allen: With respect, I would like a sort of supplementary, a kind of comment. You are responding to Ms Oddie Munro's questions on a sort of constitutional rather than a political basis. My sense of what Mr MacEachen was doing was that he sensed with the change of government that the status of a Senate that was composed principally of Liberals suddenly was dramatically changed, and that therefore playing the role of prestudy to assist the cabinet in the formulation of legislation was an assist he was not prepared to undertake, that it was much more to his benefit and to the benefit of the majority in the Senate to hold their hand, to come back on the attack afterward and to get their political points out of that and to play that kind of a role, rather than the prestudy, second guess, helper function that was built into the prestudy concept. That is my sense of where he was coming from, but I may be wrong.

The Chair: Perhaps Mr Allen and Ms Oddie Munro will be able to ask the senator exactly what his reasons were when we meet with him on Wednesday morning.

Mr Cameron: You can see that our discussion with civil servants leads us to confuse the issue sometimes. I think that is spot on as far as what really happens is concerned.

Dr Careless: One might note that prestudy is not foreign to the idea of the operation of an upper House. When you come to look at Germany, you will see that the Bundesrat has indeed this very practice. I think it is quite close to the matter you raise; that is, the Bundesrat is quite operationally close with the government of the day, and therefore there is a unity between the operation of the Bundesrat and the government of the day. It is conceivable that is the kind of association that was made here when one looked at prestudy and said, "Was that not changing the status of the Senate?"

Mr Cameron: With respect, you asked a final question about accountability. This again I think would be worth exploring with them themselves, but my understanding of the situation is it is a sovereign House of Parliament, and as such it sets its own rules and it governs itself, as does the House of Commons. It has certain institutions that are exclusive to it.

For example, if you look at the post office in Parliament, the Senate post office and the House of Commons post office are immediately contiguous and distinct. You can put your letter on this counter in front of the House of Commons post office or you can put it into the Senate post office. I think that symbolizes the extent to which, not only at the constitutional level, there is autonomy in setting the rules and governing oneself and being accountable to oneself, but in reality there has been, I think, a fairly careful preservation of the autonomy and the privileges of the upper chamber.

1530

Mr McGuinty: Mr Argue is experiencing that these days, I think.

Mr Allen: I have another question that I suppose follows on from one of my earlier ones, and that is, you have stated that there had been a significant change as the 1980s came into view with respect to what regions meant. Increasingly, the terminology really was rendered in terms of provinces. While I recognize that is certainly true with respect to the provinces that have been advocating Senate reform, for obvious reasons, because if you have an equality of provinces that certainly is a lot more power regionally, too, than you get out of an equality of regions.

Is it equally true that the provinces that have not been advocating Senate reform as an active proposition have gone along entirely with that or have they just more or less by implication, because they have not reacted against it, found themselves in that ballpark too? Has there been a differential there?

Mr Cameron: I think the priority attached to that principle varied a good deal province by province, and I think some did not spontaneously begin thinking about the structure in that way. I think Alberta, both under the previous Premier and the present Premier, has attached very substantial significance to that principle. I think that as governments they have tended to approach federalism from a more systematic view of the principles that should govern the operation of the federal system in Canada than have many other governments.

I think your observation is correct, that those that have not been disposed to think of that in that way, because their interests are not clearly reflected in that, have been to some degree carried along. The rhetoric has shifted and the categories of analysis have moved forward.

If you look, as you have, at the Meech Lake accord, there are several places where the principle of the equality of the provinces is almost enunciated in so many words. I do not think one can conclude that if one accepts the principle of equality of the provinces, that applies to every case that comes up for national policy-making or the consideration of constitutional arrangements, but it still is a significant reference point that those who want Senate reform along those lines are using as an analytical resource.

Mr Sadlier-Brown: Can I add just a point in the context of your question. British Columbia has been one of the members of the triple E family so far, and Mr Vander Zalm in his statement in January talked about an equitable, and in principle to an equal Senate, and that is the first example I know of where one of the triple E provinces has redefined "equal" just a little bit.

Mr Cameron: Which may recall the notion of the five regions, with Pacific being a region. There are lots of calculations of this kind that go on, but that is in fact one of the historic positions of BC.

Mr Allen: What you are saying essentially is that if Meech Lake were to be accepted and the equality of provinces in the context of Meech Lake were in practice, that would not necessarily force you to the conclusion that a Senate would have to be equal provinces. It could quite logically, as a bit of a counterweight to that even, to the equality in Meech, be the equality of regions in the older sense of the word.

The other question is that what has triggered the immediacy of the discussion, of course, is the unanimity proposal around Senate reform in Meech Lake, which seemed to well up in the

middle of the Meech Lake discussion as somehow suddenly being seen as a major obstacle to the accomplishment of reform, and therefore the Senate had to be tackled earlier and more urgently to deal with that problem rather than wait until after Meech Lake had been passed.

That raises a question for me that I would like to put to you, and that is, how significant do you think the question of unanimity is with respect to the Senate? Obviously it was not considered important enough to be considered in the 1982 list of federal institutions that required unanimity. Meech Lake says yes.

Does that very move substantially affect the significance in your view of what is being attached to the Senate, or does that necessarily follow? If one accepted a Senate that was amendable on the basis of seven provinces and 50 per cent of the population, do we have a Senate that is significantly different by implication?

Mr Cameron: It is an interesting point. I was not in the government at the time the Meech Lake discussions were actually going on, but my understanding is that one of the principal proponents of unanimity was the Premier of Alberta who was also one of the principal proponents of Senate reform on the basis of equality of the provinces. I think the expansion of the unanimity provision was seen as the advancement of the principle of the equality of the provinces, that you do not, with respect to certain significant issues, amend the Constitution without all of the constituent elements agreeing.

What then subsequently happened, I think, was that as people began to examine Meech Lake and its implications, the argument was made, "Well, you are going to now reduce the prospects of Senate reform if you pass Meech Lake, because of unanimity." You have these conflicting pressures at work.

I think you are asking an interesting question. If it is seven and 50 might that imply, if I understood you correctly, a different reformed product, if you will, as compared to the product if you required unanimity. I have not really thought about that particular way of cutting the issue. What I focused more on was the prospects of achieving successfully Senate reform if you have seven and 50 with Meech failing, as compared to the prospects of achieving Senate reform if you have the unanimity provision with Meech having been passed.

On that question, my own judgement is that the latter is going to heighten the prospects substantially for getting on seriously to the discussion and to the ultimate achievement, presumably, of Senate reform, but that other question is an interesting one.

Mr Allen: It is interesting that as late as November or December, Mr Horsman in Alberta was still arguing that whether you required unanimity under Meech, it was really inconceivable that you would proceed with anything as important and significant as Senate reform without the concurrence of all the provinces.

I gather that despite the arguments about the difficulty that comes from some quarters, such as Clyde Wells and others, on the prospect of reform under a unanimity regime, Alberta still remains relatively firm around the notion that this is not something one should proceed with without unanimity.

Mr Cameron: Yes, that is correct. I believe the Attorney General here in the province, when he spoke before the previous committee, also made the point–I think what we are trying to suggest is just how many threads have to come together in considering a critical institution of this kind–that the notion of proceeding to a major reform of such an institution that will affect every part of the country and all provinces, all governments within the country, in the absence of unanimity is troublesome. Certainly you are correct that there has been an evolution of thinking with respect to that issue, witness the seven and 50 being shifted by the Meech Lake provision to unanimity.

1540

Mr Harris: If I could follow up, I really find it ironic that all these visionaries say Senate reform cannot go ahead without unanimity and yet they were prepared to bring the Constitution home, prepared to entrench the Charter of Rights and Freedoms and define linguistic duality without unanimity of one of the major provinces, and obviously the province that represented one of the two linguistic dualities.

I suspect that your point of Alberta sensing that equality of the provinces might be further advanced if it required unanimity is more the case, and I also suspect that your comment that they felt this would proceed if Meech was passed is more a function of priority as opposed to anything else. I think that is the only reason why they think you are going to get Senate reform sooner, because they know Senate reform is not the top priority if Meech does not pass.

Mr Cameron: I think that is correct. I think another aspect of that is that it would be hard to imagine Quebec at the constitutional table discussing Senate reform in the absence of

Meech passing, and therefore you raise another question. The country went forward in the absence of the Quebec government's signature in 1982. Is it really prepared to do so again with respect to something as key as Senate reform? I think it is those sorts of considerations that animated the government of Alberta, as I understand it.

Mr Sadlier-Brown: The unanimity provision in the Meech Lake accord was in part a response to one of Quebec's original five principles, and that is the demand for the veto. It was a way of effecting Quebec's veto with the equality of all the other provinces on the particular questions of Senate reform, admission of provinces and so on.

Mr Harris: If Quebec has a veto, we want a veto.

Mr Sadlier-Brown: All provinces are equal in that respect.

Mr Harris: I do not want to get back into Meech. About four interesting questions raised their heads to me, but they do not pertain to what we are really talking about.

Have their been discussions among the two ministries of the province over what will best protect Ontario's interest, over what kinds of positions we should be taking? Has there been a serious beginning to look at that by either of the two ministries here, the Ministry of the Attorney General or–

Mr Cameron: There has been a good deal–I guess that is reflected in this material–of study of proposals and consideration of the kinds of issues and framing them. A good deal of that has gone on. I think there has been a lot less of the elaboration of what might conceivably be an Ontario position, and I think for a very good reason, which is the reason this committee ha been established. I think one of the lessons from the last round, and of the work of the last select committee, was that the province needed to do its constitutional business a little differently.

Mr Harris: A little prestudy.

Mr Cameron: Yes, a little prestudy. I think the recommendations reflect certain priorities and concerns of the previous select committee, certain priorities and concerns of Ontarians, of the Legislature and of the government, since it was accepted by all. The Senate issue has not had that ventilation within the province. In that sense, we as a province are behind a jurisdiction like Alberta where there has been a committee and hearings and a lot of debate and writing going on, and people have really paid attention to it.

I think the view of Ontarians with respect to Senate reform generally is pretty much terra incognita for all of us. I guess our working assumption is that is a very important first step. Trying to ensure a sense of how Ontarians and how legislators in this province think about the issue is an important part of developing a policy position.

Mr Harris: Can I just confirm my sense from the discussion today that representing regional interests has been the main reason, the raison d'être if you like, for a Senate in the first place, and that throughout the last 100 years and in fact today that is the still the number one reason for its existence?

Mr Cameron: That is certainly a central, and probably the central issue. You will see in the paper that there are a variety of purposes that are being served, including the property class having some capacity to have some second thought about legislation that was coming through.

I think it would be fair to say that was one of the aspirations at the time the thing was set up, and one of the elements for assessment subsequent to that. It is certainly the central concern of those who are promoting Senate reform today. One of our purposes here is to try to argue that there are a variety of concerns that one really needs to think through in connection with Senate reform, and that there are consequences, which one hopes will be intended rather than unintended, if one proceeds with Senate reform. One also has to reflect on that.

Mr Harris: It is an interesting road we are embarking on and I thank you, for all the questions as well.

The Chair: Just a short question, Mr Polsinelli; Mr Cameron has a timetable problem.

Mr Polsinelli: I want to follow up just a touch on what Mr Harris was talking about in asking Mr Cameron whether or not the interministerial committee has developed an Ontario perspective as to what Senate reform should do. I appreciate that we still have a long way to go before we develop–when I say we, I mean we as Ontarians rather than we as a government–a position on Senate reform.

I would be curious to see under what mindset the interministerial committee is working. It seems to me that if we look at the issue from an Ontario interest point of view, then we would have difficulty participating in the national discussions, because what would be good for Canada may not necessarily be that good for Ontario. Are we looking at Senate reform as the

province of Ontario giving up something for the greater good of all Canadians?

Mr Cameron: I guess traditionally the notion that the interests of Ontario could diverge from those of the nation as a whole is theoretical, given the customary position of this province. But I understand the point you are making. We take as a given the provisions that have been agreed to by the government in the Meech Lake document and in the first ministers' conference communiqué of last November. Ontario was a full participant in both cases and accepts the notion that if Meech Lakes passes there will be a round 2, and one of the key elements for round 2 will be Senate reform. Therefore, we will participate as a province and as a government conscientiously in that process.

Supposing somebody personified the government of Ontario or the people of Ontario and sat them down and said, "What are your priorities for the next constitutional discussions?" I find it hard to believe that Senate reform would be at the top of the list. It seems to me that the issues that emerged out of the last select committee's report and recommendations are much more the sorts of things that Ontarians coming before their legislators have said are important to them.

To that extent, I think it is something to which the province is responding, ie, a perceived grievance and concern and a set of proposals that are really emerging from other parts of the country. But I am presuming that the judgement is that it is in the national interest that those be as creatively and as responsibly addressed as possible.

Mr Polsinelli: I tend to agree with you. I guess the reason for my question is that part of the outcry for Senate reform is to have the Senate adequately address the question of regional disparities. Since we are perceived to be one of the provinces that–

Mr Grandmaître: Has it all.

Mr Polsinelli: –has it all or is doing very well, in addressing regional disparities, we would be addressing the concerns of other provinces and not necessarily our own. In terms of dealing with the whole issue of Senate reform, we have to take our mind outside of the Ontario mindset and look strictly at the national interest. I appreciate your response to that. Thank you.

The Chair: Thank you very much, gentlemen, for your presentation and also for your discussion paper. I think we are going to find it very useful as we embark on this program. I would like to thank Philip for his presentation and background paper. We think we are going to have an interesting time, to say the least, and we appreciate your contribution to the committee.

Mr Cameron: A pleasure.

The Chair: Will the members hang on for just a moment. Our clerk has a few things she would like to pass on to you.

Clerk of the Committee: For those of you who are going to Ottawa with all of us this evening there will be airline limousines out front at 4:30. I will be waiting out in the lobby to shove you into those.

A couple of agenda changes: One is that tomorrow, where it says two o'clock, tour of the Senate chamber, in fact the tour of the Senate chamber is going to come just before lunch and then we will go in and sit in on the Senate later on in the afternoon. The other change for tomorrow is a tentative change. Rod Murphy from the New Democratic Party is tentatively scheduled for four o'clock, Tuesday.

Mr Allen: So we meet at 10 am in the morning?

Clerk of the Committee: Yes, and I will have cabs from the Delta Hotel for 9:30 to take us to the Victoria Building.

Mr Grandmaître: I live in Ottawa, so I do not need a room, but am I allowed to take a cab?

Clerk of the Committee: Yes. Anyone who takes a cab, just keep the receipt and attach it to your expense form.

The Chair: All right, we will see you either on the plane or in Ottawa. The meeting is adjourned.

The committee adjourned at 1548.

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Deuxième session, 34e législature

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Select committee on constitutional and intergovernmental affairs

Senate reform

Comité spécial des affaires constitutionelles et intergouvernementales

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL AND INTERGOVERNMENTAL AFFAIRS

Wednesday 30 May 1990

The committee met at 1012 in room 151.

SENATE REFORM

The Chair: Ladies and gentlemen, I think we can get under way. Mr Allen is delayed. He will be here momentarily.

I would like to welcome you to the select committee on constitutional and intergovernmental affairs. For those of you who may be viewing these proceedings, I should indicate to you the purpose of the committee.

I would like to read the terms of reference: that the committee be struck "in anticipation of a first ministers' conference on Senate reform tentatively scheduled for November 1, 1990, to undertake a program of consultation on Senate reform; that the committee have authority to meet concurrently with the House and during any adjournment of the House;...that, subject to the proclamation on or by June 23, 1990, of the Constitution Amendment Act, 1987, signed at Ottawa on June 3, 1987, the committee complete its program of consultation and present its report to the House by October 15, 1990...."

Our committee has been meeting since February of this year. We have spent some time in Ottawa. We have had consultation with senators from various provinces, from Senate staff, from political scientists and historians both there and in Toronto. The presentations have been very thoughtful. They have been very helpful to the committee.

CANADIAN COMMITTEE FOR A TRIPLE E SENATE

The Chair: We continue this morning with two important presentations which will provide us with a view from western Canada. I am pleased to extend a warm Ontarian welcome to our guests this morning.

We will begin by welcoming Bert Brown, who is the chairman of the Canadian Committee for a Triple E Senate. As I indicated to you earlier, sir, we would appreciate your making a short presentation and then allowing some time for questions. We have until 11:30. We would like to leave some time for questions. You have indicated you have about a 20-minute presentation which would be just fine with us. The floor is yours.

Mr Brown: First of all, I would like to thank the committee for its hospitality in having us come here and make a presentation. It was with some trepidation. Some years ago people told me that when I got to Ontario I was going to be skinned alive and tarred and feathered and shipped out of town. I have been here twice already and I have not as yet been bodily threatened or any such thing, so it is nice to be back again. If the reception is what it was last time, I will be more than pleased with our chance to make a presentation.

To begin, I should like to define first the three principles upon which the Canadian Committee for a Triple E Senate has operated for some seven years. It is the goal of our committee to reform the Canadian parliamentary system, to make it more attuned to the needs of a modern Confederation.

The first principle would be to elect in future all representatives to the Canadian Senate. The second principle is to give the provincial partners in our Confederation an equal number of elected representatives in that reformed Senate. The third principle is to confer upon the Senate, through an amended Constitution, the powers necessary to make the legislative body an effective voice for all of the provinces.

Our committee has exclusively addressed its efforts to these three principles. By way of information, our work is non-partisan. It includes efforts to explain and promote the triple E Senate reform concept to all political parties, to service and business organizations and to Canadians at large.

We have participated in a number of task forces, one for the Reform Party of Canada, during which a model triple E constitutional amendment was drafted after public hearings in western provinces, and it was presented to the western first ministers' conference in the spring of 1988.

As committee chairman, I served as a permanent member of the Alberta government Senate Reform Task Force, also in 1988. The Alberta task force was struck as a travelling constitutional task force, with the agreement of the Prime Minister and the provincial premiers, to make representation on Senate reform to provincial and territorial governments.

To bring your committee up to date on our activities and successes as briefly as possible, I will simply state that we currently enjoy the support in principle of seven provincial governments for the triple E Senate and the endorsement of the province of Nova Scotia, whose only official comment is that it has no fundamental problems with our principles.

As a consequence of our committee's desire to demonstrate widespread support in the provinces outside central Canada, our focus has resulted in minimal work to date to promote the concept here in Ontario or in Quebec. Despite that deliberate neglect, we find support has been self-generating through media exposure of the idea and our committee can legitimately claim a high degree of support in Ontario's and Quebec's less populated areas outside of Toronto and Montreal.

Indeed, national opinion polls, such as the Angus Reid poll of November 1989, have found support for the triple E as high as 73% in parts of the west, 67% in Atlantic Canada, 55% in Ontario and 44% in Quebec, where 36% are undecided and 19% are opposed.

My committee has never commissioned its own polls but is greatly encouraged by the rewards they reflect for our efforts to explain the need we see for Senate reform, the benefits thereof, and the dispelling of myths and roadblocks to reform, which are thrown up by those opposed to change in the status quo.

The national percentage in favour in Canada is the same percentage as it is in Ontario. Canadians are arguably polled to death at various times, and we see polls only as a barometer to spur our efforts towards a situation where a large majority of Canadians will ultimately agree on both the pressing need to reform our Senate and the specifics by which this goal is to be accomplished.

The balance of my presentation will be broken into two parts. The first is to describe the focus of where the body of

work on Senate reform has led us to date, the second to explore the concerns of those who sincerely oppose this reform.

With regard to the present focus, after years of promoting an idea based on the three principles of elected, equal and effective, we have found it desirable to translate this widespread agreement in principle into something more specific. Contrary to some popular beliefs, a great deal of work on the mechanics and details of various Senate reform proposals has already been done by various committees early in the past decade.

For references, see the Report of the Special Joint Committee of the Senate and the House of Commons on Senate Reform, January 1984, the Report of the Alberta Select Special Committee on Upper House Reform, March 1985, some early publications on regional representation published by the Canada West Foundation in the 1980s, and finally the draft triple E amendments by the Reform Party of Canada and the roundtable discussion in Calgary in February 1990, sponsored again by the Canada West Foundation.

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The body of this legitimate work has made a clear focus on the areas of agreement and disagreement in comprehensive reform much easier for us all. My assessment will begin with the one principle of complete and unanimous agreement among the works mentioned: that the Canadian Senate should be directly elected by the people of Canada. There seems to be little need for much further discussion on this first principle, and I should be astonished to find that your committee would hear any significant number of views to the contrary from either Ontarians or Canadians in general. However, that conclusion must await your own report. It seems to appear as a fundamental that representation of legislative bodies should be elected by the people.

I will preface remarks on the second principle, that is, equal representation in the Senate by province regardless of size or population, by stating that no legitimate advocates of Senate reform intend to fundamentally change the democratic principle of one person, one vote, currently represented by the existing makeup of the members in the House of Commons.

What we do desire is a vehicle to democratically represent the legal entities which make up our Confederation, the provinces, on an equal basis in the Senate. Such representation is justified by the recognition of the second principle of a Confederation, which is representation for the partners. Examples are found in the states, provinces or cantons which are represented equally in other unions throughout the world, most notably Switzerland, West Germany, the United States and Australia.

The provinces of Canada now exist as legal entities complete with legislatures solely empowered to enact legislation for the protection and benefit of the interests of their residents in specific areas of education, health, resources etc. Equality of representation in the Senate would provide a democratic voice for all provinces whereby their interests would not always be vastly overshadowed by the influence of provinces holding the larger populations.

Understandably, the second principle of equal representation in the Senate finds greater favour with the smaller provinces than it is expected to find in the central provinces of Ontario and Quebec. However, it is worthy of note that even in Metropolitan Toronto my committee finds support among minority concerns, which see a reformed Senate as a legitimate vehicle for the expression of their interests.

No clear consensus on the exact number of equal senators who should represent each province has to date been reached. The numbers proposed have varied from a low of two to a high of 20 per province. My committee sees the majority opinion as rejecting the two extremes outright while having no real problems with either of the two figures most often proposed, that is, six senators per province and two per territory or 10 per province and four per territory.

Again, the final decision must await the legitimate input of the provinces of Ontario and Quebec. Our only requirements are that the numbers be large enough to effectively represent both provinces of large geographical scale and large population while at the same time not creating a Senate so huge as to be unwieldy or unnecessarily expensive to the taxpayer.

In addressing the third principle of the triple E concept, the need for an effective Senate, I think it can be fairly stated that no legitimate purpose exists to reform the Canadian Senate unless the objective is to make that institution an effective instrument of some agreed-upon jurisdiction. The achievement of real Senate reform will require an extraordinary effort to reach consensus, and few would argue that we undertake this task merely to entertain the academics in the political science departments of our universities or the intellectual élite among us.

I was pleasantly surprised by the comments of Attorney General Ian Scott during my first appearance at Queen's Park in the fall of 1988. When the triple E concept was discussed as proposed by the Alberta Senate Reform Task Force, Mr Scott stated that elected senators seemed to be a given by all governments in Canada and that certain precedents had taken place in Canada, such as the Edmonton accord, the first ministers' conferences and the preamble to the Meech Lake accord, "which had firmly established in the minds of Canadians the principle of equality of the provinces." He went on to say that Ontario may not fight the principle of equality.

I emphasize the word "may" since I have no desire to embarrass any of your government members or to imply that something that they might have said in a spirit of generosity in any way commits your government or your committee to a particular course of action. I use this quote only as a preface to the most illuminating comment of Mr Scott's which was to say, "Ontario will want to have major input into the effective powers of this new Senate."

I feel this comment goes directly to the crux of the true issue in Senate reform. To date, there seems to be agreement that to be meaningful Senate reform must result in a degree of power residing in the Senate that would enable its majority vote to be reflected in the decision-making process at the national level on an ongoing basis.

Concurrent with this desire for effective and legitimate power in the Senate of the future, there is an underlying concern that such power not result in a deadlock where the House of Commons would be paralysed by a mischievous and obstructionist Senate. No amount of assurances that such an event would rarely happen in reality are able to assuage the fears that it could happen, and in fact once did result in deadlock and double dissolution of both houses in the Australian experience. A clearly understandable and workable method of preventing deadlock must be agreed upon for Senate reform to win the hearts of Canadians in general. The current actions of the existing appointed Senate do not help in allaying such fears.

If a weakness exists in the first triple E amendment drafted by the Reform Party Task Force, it is the deadlock-breaking mechanism suggested, whereby a joint committee of both Houses would meet to resolve disputes. A more clearly under-

stood and workable suggestion may be found in the amendment proposed by the roundtable discussion in Calgary in February.

One of the participants, Dr Allan Cairns of the University of British Columbia political science department, suggested the use of an unusual majority to break deadlock. This unusual majority would have two components:

1. To overrule the defeat of a bill passed by the House and defeated by a majority vote in the Senate, the Commons would be required to repass such a bill by a percentage vote larger than the percentage vote in the Senate.

2. Such a percentage vote would have to reflect a majority of members of Parliament representing 7 out of 10 provinces and 50% of the population. This provision is quickly recognized as the majority currently required for constitutional amendment. In all but the rarest of cases, it would require the support of opposition members of Parliament in at least some provinces, and proving such widespread support throughout Canada would clearly be sufficient justification for maintaining supremacy of the House of Commons on any particular issue.

Each task force my committee participates in results in some ideas of merit, and I have no doubt that your own report will glean some further wisdom for the solution of these specific concerns on Senate reform.

In summing up my presentation here today, I would like to dispel a few myths about the goals, motives and/or fears surrounding the triple E:

1. The assumption that tiny Prince Edward Island will somehow frustrate the will of Ontario or Quebec in a triple E Senate. This assertion is patently absurd since the Senate would operate by a majority vote of its members. The addition of the 26 smallest states by population in the United States shows that they represent only 17.4% of the total US population. The same addition of the six smallest provinces by population in Canada would represent 19.1% of the population.

2. A charge is made that the Senate would simply become a mirror image of the Commons. This almost never would be so if the senators were elected by the provinces and supported by provincial party coffers only, if they were ineligible for cabinet positions and if they were elected by provincial parties not having a national mandate. For example, the Parti québécois, the Social Credit Party, the Western Canada Concept, the Conference of Regions Party, etc, as well as the mainstream parties could have representatives elected on fixed six-year terms, with staggered elections for continuity.

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A third concern is the argument made that the reformed Senate would make Canada harder to govern. Reform could possibly make it harder to govern as badly as it is being governed today, but by providing for a forum into which provinces large and small can have an equal vote to promote their interests, Canada would be easier to govern, with both the perception and the reality of fairness.

Some critics of the triple E Senate are beginning to label it as a power grab by the west. In reality, the triple E is a design for a counterbalance to offset the unfairly weighted influence given to populous provinces, which allows interests of both western and Atlantic regions to be effectively ignored when national decisions are made.

The west and the Atlantic provinces do not wish to always win, or even to always automatically oppose the centre. They want only to be heard with some real chance of having influence in national policy. It is entirely possible that a new ally to the triple E will surface soon throughout the area called the Golden Triangle of Canada: Toronto, Hamilton, Montreal. The present central focus of industrial growth not only exacts a price in terms of balance of payments to less industrialized have-not provinces, but the environmental impact of too much growth concentrated in a specific area creates unacceptable levels of air, water and ground pollution. Eventually, the positives which attracted the growth give way to the deterioration of the environment and the quality of life I think we all desire.

Moreover, even sustainable growth throughout this vast country would reduce the environmental stresses, along with the man-made stress of traffic congestion, cyclical inflation, boom-and-bust economies and frustrations of those who feel left out of the mainstream of Canada's future potential.

The most often asked question of my committee and myself over the past seven years is why would Ontario and Quebec ever agree to equality or effective powers in a reformed Senate when they have everything their own way now? While our answers have always been sincere and each with some merit, they have repeatedly changed and evolved.

Our first response was to say that the eight outer provinces will some day accept nothing less. Then we grew to honestly feel that the central provinces would agree to meaningful reform because Canadians are basically a fair people. It is now apparent that eventual agreement on Senate reform will come in the simple interests of an ever-increasing need for national unity.

Canada is a democracy; with meaningful Senate reform, we think it is capable of becoming a great democracy. Canada is too vast and too diverse to be governed intermittently by first ministers' conferences and it is far too important to be governed by heated confrontation.

I leave your committee with this thought: It is only through public participation at these types of forums that we can prevent the kind of divisive rhetoric and constitutional crisis that we face as a nation in the month ahead. Conversely, when our government leaders participate in constitutional deals which exclude Canadians, they set us against one another and create tensions which may be impossible to erase.

As a Canadian, I fear that the people of Quebec have erroneously convinced themselves that the vast majority of English Canada is rejecting them. Nothing could be more untrue, yet, deceptively fostered, this perception has now become reality. It is difficult to imagine how Canada could be stronger or compete better globally by becoming smaller and more divided. It is impossible to imagine how the Quebec people could effectively preserve or protect their language and culture by isolating themselves in an enclave and passing laws which would inevitably restrict the options and opportunities for their own people in a global economy in a shrinking world.

The inexorable move to universal communication is a very real threat to the French language. We have no magic solutions, but of one thing I am certain: the threat to French is real and that threat does not originate as a conscious or planned course of action by English Canada. It is the consequence of a collective direction in the modern world. The province of Ontario has a golden opportunity to be pivotal in the current crisis as a mediator among Atlantic, western and Quebec aspirations. If partisan issues can be put aside, perhaps we can yet reach out to Quebec with generosity, and it will give enough to understand the compelling need to compromise and reach back to us.

For your committee I wish there was more time, as we honestly feel that consensus on Senate reform has the potential to be the foundation upon which a bridge to the interests of Atlantic, central and western Canada could be built. It is to be

hoped that sufficient goodwill exists in the hearts of Canadians to overcome this unnecessary but very real crisis we face. I believe goodwill still exists in the hearts of most Canadians.

Mr Allen: I apologize first to you, Mr Chair, for the delay in starting the proceedings this morning. I rather underestimated the time it took to get from the Island Airport to this place.

Let me first of all thank the presenter very much for his presentation. It is extremely useful for us to have some representatives of groups in the west, and Alberta in particular, which have been doing some rather long-term work on Senate reform and have established quite substantial credentials in that regard.

While I will not try to second-guess any more than himself the direction of the Attorney General, the government or this committee in terms of where it may go on this subject, I think there is certainly no question that we are engaged seriously in the issue and we certainly recognize that, of all the elements you have covered, the principle of election seems to be very widely supported here and elsewhere. We have had presentations which have told us otherwise, that it is not too wise and it has some restrictions in the nature and extent of representations that can be secured in terms of some of the subgroups of Canadian society from which sometimes one might want some advice in something called a Senate, but I put that to one side.

In a passing comment, when the people of Quebec look at options like sovereignty-association or even independence, I do not think they think of isolating themselves in an enclave. I think as a people they are very widely connected, not only in this country but south of the border and into the international world. They are expanding their horizons rather than contracting them, and I think there may be some element of truth certainly in what they observe. I do not think any of us should view those options as though somehow or other they were negative in any of those senses.

First of all, without wanting to embroil you too deeply in the current Meech Lake issue, you have done a lot of reflecting on the issue as it interplays with Meech Lake. Is it your belief that the principle of equality in the triple E formula implies that any movement towards Senate reform should of necessity embrace the principle of unanimity of agreement on reforms?

Mr Brown: You are talking with respect to the crisis that we are having right now.

Mr Allen: The current issue.

Mr Brown: Yes. I would never have been so presumptuous up until a month ago to assume that it could be the fulcrum point upon which a deal could be made on the crisis we face. But seeing the headlines in the Toronto Globe and Mail of yesterday or the day before where it specifically said Senate reform may be the key to a deal, I think some agreement is possible on perhaps what Premier Filmon has come up with most recently; that is, the sunrise clause, as opposed to the sunset, in which he suggests that we agree upon the first principle—which we all agree on basically anyway, at least the majority of Canadians—which is elected members for our second chamber, and also agree on the principle that we think is fundamental, equality in that second chamber, maintaining again the democratic principle in the House of Commons. Then we give ourselves three years in which to engage in a serious national debate as to what the powers of that Senate would be, with the proviso that the sunrise clause would trigger at the end of those three years, to leave the Senate with the powers that the Fathers of Confederation deemed wise to confer upon it, if we do not achieve national consensus on the actual powers.

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I think I would say uncategorically that if Canadians are willing to go so far as to believe that a deal must be struck on the Meech Lake accord or it really does threaten our country, the deal that is proposed now by Premier Filmon would be achievable, Meech Lake would definitely be a go, and the rest of western and Atlantic Canada would embrace the whole thing. The rhetoric on definition of distinct society and the hidden worries about what the distinct society means for other provinces would evaporate in the realization that they were getting a legitimate voice in the national decision-making process to protect their own interests. I think that would ultimately be seen as a deal-maker for virtually every province in this country.

The major concessions on that issue would have to come from the two central provinces. Ontario, admittedly, as I have tried to say in my presentation, could be the pivotal province to make it happen. Quebec would ultimately be faced with a decision to either give and compromise in the interests of maintaining the Canadian Confederation or it would end up being the one that ultimately drove the last nail into the coffin.

Mr Allen: You partly answered my second question in that connection. That was to be, how far should we go in advance of a Meech Lake agreement, or alongside a Meech Lake agreement, in nailing down specifics of Senate reform at this point in time, first, bearing in mind the largeness and seriousness of the question, which obviously bears an awful lot of reflection and consideration and consultation; second, bearing in mind the great concern there was about Meech Lake in the first instance seeming to be negotiated with too great haste and without sufficient time for national input and reflection? I wonder whether you think we would be wise in going very far in nailing them down. Obviously, two of the three Es is a pretty significant step, then allowing the provision that if the effectiveness is not, in effect, worked out in three years, there is the further pressure placed upon the holdouts, if you like, by that provision whereby the levers for effectiveness would magnify increasingly as one got past the three years.

Mr Brown: The three-year sunrise clause would certainly put us on a timetable which we could not ignore. If you wanted to just ignore the problem, then it would be solved by a three-year elapsed time frame. If you wanted to address it seriously, then you would have input into what those powers would be.

In either case, we would not continue what has become almost 120 years of debate on Senate reform. I think they started this debate about two weeks after the Fathers of Confederation signed the original article. Again, you go back to the historical perspective that they spent more time designing the Senate than they did, in fact, the rest of the articles of Confederation, in the sincere belief that what at that time they called "regions" would have to have a voice at some point in the national decision-making process.

We have neglected that for a very, very long time and I am alarmed by the rhetoric in this country. If it is believable at all that our country and its future are threatened, then I have to ask every Canadian, what price are you willing to pay to keep the country together? If it comes down to an agreement on elected—which is a fundamental principle, I think, throughout the world, that people who represent you in a legislative body should no longer be appointed, they should be directly responsible to the people they serve—that is fairly easy to agree on.

The second principle of equality for the partners in any Confederation has been firmly established, I think, by the precedents I have already named: Switzerland, West Germany, the

United States and Australia. I do not think it is asking too much to ask for equal representation in that second House, realizing at all times that we do not wish to see Prince Edward Island override Ontario on any issue. What we want is that if Prince Edward Island goes into a forum in which it has a legitimate voice and is able to convince five other provinces that its view of a particular bill or a particular issue is the right one, then the Senate would have enough power to make sure that the view of six provinces in Canada would be supreme, with the exception of the unusual majority which I have outlined or some other mechanism that would make deadlock impossible.

Mr Allen: I think those other federations are rather different federations from the Canadian in a number of ways. If it is inherently appropriate and good in itself to resolve the question with Quebec, why should we put that process and Quebec to ransom by insisting on Senate reform or some significant steps towards that in advance?

Mr Brown: The process that the Prime Minister and the 10 premiers entered into has put the entire country at risk. I would say that in making a proposal on Senate reform we are looking for a solution to that risk. I think the fundamental mistake that was made is that neither the Prime Minister nor the premiers understood that Canada had matured as a nation between 1982 and 1986, when the Edmonton commitment was signed. The first fundamental error was made when they all agreed that they would address the interests of only one partner in Confederation before all others.

Mr Allen: Having addressed the others in 1982.

Mr Brown: The second mistake was made when they decided to agree to an accord which many people now assess as being mutually exclusive to the interests of other provinces. When I say "mutually exclusive," I refer to the unanimity clause. It is the assessment of political scientists and constitutional lawyers and people on both sides of this country—and I think you will find people in your own province who will tell you—that unanimity is the thing that will for ever make any meaningful Senate reform impossible.

To add a little weight to that, if Meech Lake fails because we cannot achieve unanimity, then I think I will have proven my point. If unanimity cannot be reached in the interest of saving this country, then how would we ever achieve it when something much less important was at stake?

Mr Allen: The unanimity does not apply to the whole of the Constitution, of course.

The Chair: Thank you, Mr Allen. You may get another chance later. We have a list of questioners. Mr Eves.

Mr Eves: Mr Brown, I would like to welcome you here today. I think the people in Alberta are perhaps a lot further down this road than we here in Ontario are and I, for one, think that Senate reform is probably an idea whose time is long overdue and should be dealt with and perhaps, as you have pointed out, at no better time than the present with the current constitutional debate.

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I would like to touch a little bit on each one of the three Es, if I might, for a moment. First of all, from the deliberations and the hearings that our committee has had, I do not think there is much dispute about the fact that the Senate indeed should be an elected body. There have been several discussions that we have heard from various witnesses and individuals about term, how you would go about electing these people, different methods of election, and I note that in your proposal you are proposing, I believe, and correct me if I am wrong, that senators be elected at the same time as provincial elections are held and three senators be elected each provincial election to serve for two provincial election terms.

Mr Brown: Would you like me to answer that point right now?

Mr Eves: Yes, go ahead.

Mr Brown: Actually, that is a proposal that was made by the Alberta government report, the Anderson report or the upper House reform select committee report. My committee has at this point in time not tried to tie it down any further than the document that we drafted in February under the roundtable discussion in Calgary, which was to suggest that senators be elected for a six-year fixed term and half of them be elected each three years so that there would be continuity on a fixed basis.

We further suggested, as I said in my paper, that we have not set in concrete our idea that there should be either six and two for the territories or 10 and four for the territories. We are flexible. I think the majority opinion that my committee has gleaned over seven years of listening to Canadians focuses on the number of 10 per province for the simple reason that it comes most closely to reflect the Canadian Senate we now have. So I leave you with that.

Mr Eves: I guess the only comment I would make with respect to tying elections to provincial elections is that there has been the viewpoint expressed to this committee, and one that I think has some merit, that senators would become too tied to provincial political parties and the provincial political party process and would not properly reflect the national perspective that they are—

Mr Brown: I agree with you completely. Again, I guess I still have not made myself totally clear. That is not a proposal my committee put forward, that comes again from the Alberta study, and I think we have evolved beyond that study. That was back in 1985, and since then we have decided, in order to make sure that the Senate of the future does not become a mirror image of the Commons or a mirror image of its own provincial government, that senators be eligible to run for any provincial wing of any legitimate provincial party as senators and that they be supported only by the provincial coffers. In other words, the national Liberal Party would not be allowed to support candidates for Liberal senators from Alberta, the provincial party would, and same thing for all of the other parties involved.

The thinking there is that if you disconnect as much as possible the purse strings of the national party, then you disconnect the influence over that body that you are creating. We have tried to throw up as many roadblocks as possible to keep the Senate of the future from representing anything but the provincial interests in the national body. We do not want senators to be eligible for cabinet posts, because we do not want the Prime Minister of the day to be able to reach back into the Senate and tap Mr Smith on the shoulder and say, "I have one opening in cabinet and I'd like to consider you for it, but I need your support on the next half dozen bills." Pretty soon he has 110 senators on the short list for one cabinet post, but he has effectively got control of the Senate again. So we have tried in every way to throw a whole number of roadblocks in to break up that influence of the one body over the other.

Mr Eves: I would like to go to the next principle, of course, which is "equal." We have had a viewpoint expressed by several witnesses, especially when we visited Ottawa and heard from senators and a number of academics alike. The viewpoint that has been expressed often is that they do not believe that a triple E Senate will solve all the problems that western and Atlantic Canadians think it may solve for them, that it is not the simple quick fix that perhaps many people in western Canada and the Atlantic provinces feel it is, and they go back to the original idea of regional equality in terms of representation. So I would like you to comment on that.

I also would like you to comment on the fact that I guess another underlying criticism of equal representation is that there is another principle important to democracy called representation by population. I wondered what your thoughts on those were.

Mr Brown: Okay, I will start with your last point first, which is to re-emphasize that we in no way intend any change in the representation by population which currently exists in the House of Commons. We feel that is a fundamental cornerstone of democracy and we do not desire to change it in any way, other than perhaps to relax some of the extreme party discipline that is sometimes exercised, I think to the detriment of this country. But as far as the actual representation is concerned, we do not desire to change it.

We also do not believe that the triple E Senate is in any way, shape or form a panacea for all of the ills that afflict this nation of ours. We see in fact that the most important thing that might be achieved by a triple E Senate is the perception of fairness, if not even the reality. It is just the perception that will be created that tiny Prince Edward Island or British Columbia, or even Ontario, will be able to go into this forum on an equal footing with all of their other partners in this Confederation and that they have just one chance, and that is to fight for the collective will of a majority of the people in that body—not that they ever think that every time they go into this argument they will win. In fact, in most cases they probably will not win. They simply will not win. But they will come out of there feeling they had a fair chance and that their argument was not good enough to win that collective will. They will not go away in frustration, and I will not have to listen for the declining years of my life to western and Atlantic Canadians who say: "What the hell's the use? We have no chance at all, so what's the point?"

I have been arguing for seven years with western Canadians who have told me that I am a foolish individual to promote this idea that I should be joining the Western Canada Concept party and that we should get this over with. So I have spent seven years of my life travelling across this country and invested a great number of hours of my time as a volunteer to promote this idea, not so that this country could divide itself, but so that it could bring itself together.

I do not need a Senate that will always make Alberta win every time it goes into an argument. I need one where we have the perception of a fair hearing, that is all.

Mr Eves: Thank you. The last point I would like to touch on briefly, of course, is the last of the three, which is "effective." Assuming even that the other two are accomplished, which are "elected" and "equal," without some effective powers and some very defined powers, I think the whole process is meaningless. I think too often perhaps, and myself included, we do not address enough thought or time to the powers of an effective, elected, equal representation in the Senate. I wondered if you had any thoughts about what the powers of the Senate should be or whether some stand out more in your mind than others.

Mr Brown: I would admit to having probably the most biased opinion in Canada on what those powers should be. I would be ultimately happy with the powers that the Fathers of Confederation deemed to give the Senate right now, but I am enough of a realist to admit that at some point in time—and I have always felt, and people have told me time and time again, "Where you are going to have to do the fighting is over equality," and I have said no. When we come down to the final agreement on Senate reform and we get in the smoke-filled back room that everyone always wants to talk about in politics—I guess by then we will all be non-smokers, but anyway—when we get there, the deal will be struck over what the effective powers will be. That has always been my belief and it remains my belief.

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But I am realistic enough to believe also that to win the hearts of Canadians across this nation, we must agree upon something that they can focus on immediately and say: "Okay, this will prevent deadlock. This will prevent the paralysis of our national government. We will not have an obstructionist or mischievous Senate"—which some people are saying is what we have right now—"and therefore, regardless of what party is in power, we will not have a Senate that will just, for the purpose of being mischievous, prevent the passage of anything."

So we must have that mechanism, and I hope that this unusual majority that we have proposed now will be it, but if other people have a wiser thing, we are certainly open to whatever that deadlock-breaking mechanism must be. I would say that it must be clear, concise, understandable and workable.

Miss Roberts: I have a couple of questions. Thank you very much for your presentation. I certainly enjoyed it and it opened up my eyes on a couple of points.

First, equal, and you believe one person, one vote, and you have talked about the equal provinces, 10, 8, 6, whatever the decision is, but you also have to consider that there are other factions or parts in our provinces and other minority groups. As you are aware, if it is an elected Senate, it is going to take a lot of money and a lot of concern for people to become elected. Therefore, when you think of equal, are you thinking of only equal as in numbers among the provinces or something equal as to 50% women, 50% men? How about some amount? How many of our first Canadians would be there? We could have a Senate that was all female, very easily, and—

Mr Brown: That is not a frightening possibility.

Ms Hošek: I will settle for it.

Miss Roberts: That is right.

Mr Polsinelli: A kinder, gentler Senate.

Miss Roberts: Is equal only the number from the provinces and you are not prepared to entertain anything else?

Mr Brown: I am not prepared to ask for someone to enact a law that requires equality by the sexes. I hate to be—

Miss Roberts: Or minority groups.

Mr Brown: Yes, or minority groups.

Miss Roberts: Or linguistic groups.

Mr Brown: Yes. I believe the best we can provide in our country is for the party system, which I have tremendous problems with in terms of its exercise of extreme party discipline sometimes, to remain in place so that we provide for at least an opportunity for anyone to run for elected office in this country.

I know some women politicians, and my wife would simply not allow me to say other than that I admire some of the quality of the people who have come forward for public office, and I would have to say personally that the politician I admire most in the entire country is a woman. I began my work on the triple E Senate from my own Three Hills constituency in Alberta, which has been represented by Connie Osterman for many years. I firmly believe there is no one more qualified or more sincere. So I have no problem with the Senate ending up all women if they win in an elective process.

I would say to you that there are minority concerns in all provinces that are beginning to focus on what they think they see in a reformed Senate. As an example I would use a downtown Toronto riding. I think it is called Toronto East, and I hope I do not have to prove that. My recollection has to go back here almost four years now, so that is why I am hesitant, but I believe there is a very strong Ukrainian ethnic minority represented in that riding.

Their focus on the triple E was to come to me and say that there are a million Ukrainians in Canada and they are spread throughout every province in this country and that if we could get a triple E Senate we could lobby our senators from every province in the hope of achieving a majority so that if we wanted to amend the Immigration Act or if we wanted to restrict it or if we wanted to whatever, we would have a focus for that minority concern.

So I guess I would just have to say that in building this new, reformed Senate, we have hope that whether it is an ethnic minority or an economic minority or a cultural minority or whatever, if it can win a majority opinion among the elected senators, it too will have the perception that its voice will be heard in the national decision-making process.

Miss Roberts: But that could be done right now. There is no question that if they wished to do so, they could lobby each one of the senators from all over Canada and do precisely the same thing.

Mr Brown: Right.

Miss Roberts: What you are indicating is that the Senate would be so effective that it would be able to do something that would be above and beyond the will of the House of Commons, because it can do that right now.

Mr Brown: Absolutely, but one other difference would be that if they are elected, then if you lobby them, the implicit threat in that lobbying is that, "If you don't listen and react to my lobby, you're not going to be there next time the election comes." Right now you do not have that privilege. You can lobby a senator until you both fall asleep.

Miss Roberts: Yes, that is right, but that does not deal with the equality, that deals with whether or not the person is elected. One million people across Canada would not really affect someone who did not have any Ukrainians in that particular province or threaten him and people from a certain province that they would not be elected.

Mr Brown: That is correct. I do not mean—

Miss Roberts: If I might go on, I have got two or three other things and there are many other questioners. You indicated that your reformed Senate would be one where there was a perception that there was a fair hearing and that is all you are asking for. But what you are indicating is that you think the will of one man, one vote should be thwarted in some special way by your unusual majority. So you would like the Senate to be equal to the House of Commons, only if it is more than equal, which is an unusual majority, which would thwart the will of one vote, one person and completely compromise that, so that indeed that law would pass. So what you are asking for is a very effective body.

Mr Brown: Absolutely.

Miss Roberts: That is right, which is, if not equal to, almost equal to the House of Commons, which is a bit more than we have heard before.

Basically what I am concerned about is that we cannot look at equal and elected until you decide—"you" meaning the people of Canada—what "effective" means. I think that is where I would love to see some changes occur as quickly as possible, but until you have decided, and that is the people of Canada, what "effective" means, we cannot holus-bolus go into equal and elected. I think Premier Filmon has the cart before the horse.

Mr Brown: I agree that probably for Ontario and Quebec at this point in time it would take a considerable exercise to come to the conclusion that elected must be tied with equal immediately and then work out the problems.

Miss Roberts: I do not believe that to be a problem at all. I think you have to look, as you have indicated very clearly, at "effective" first.

Mr Brown: Absolutely.

Miss Roberts: I think the rest of it would fall into place.

Mr Brown: As I said already, I am perfectly happy to accept the powers that the Fathers of Confederation thought were responsible. I would just ask you to focus on the two principles of Confederation. The first one is, again, representation by population, one person, one vote. We already have that in the House of Commons and we do not, again, wish to change that principle.

The second one that we want recognition for is that these partners in Confederation already have a legislature of their own and under our Constitution they have constitutional authority in given areas. They have control over their resources, their education, their health programs, etc. There are more and more examples that we could all give. But what we want is recognition that those provinces exist as a legal entity of their own. Prince Edward Island has the same kind of legislature that the province of Ontario has. All we want is recognition of that principle and the reflection of that recognition in the Senate.

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We are willing to accept the fact that at some point in time the House of Commons will rule supreme, but we want it to prove an unusual majority in order to do that. We want them to prove that they do not have just the will of the two central provinces with which they can now exercise control over the interests or wishes of all the other provinces together by having the majority of just two provinces. This is what threatens this Confederation more than any other principle and it will not go

away until it is addressed. I think it was Mr Eves who said that when the time for an idea has come, then it must be addressed.

Miss Roberts: There is no question at all about what you have indicated, but you have to determine what you think is effective and come forward with those points of view. I agree with you that maybe we leave it just the way it is.

Mr Grandmaître: Mr Brown, welcome to Ontario. I believe in the triple E concept and must commend you to push it through right across our provinces across Canada. I think it is a viable concept, and carry on. I do have some concerns about an effective and equal Senate, but the answers given to my other colleagues have not convinced me yet that an effective Senate in your proposal is workable at the present time. But if you keep working at it, I am sure we can find some solutions.

I would like to refer you to page 6, the second-last paragraph of your paper: "If partisan issues can be put aside, perhaps we can yet reach out to Quebec with generosity and they will give enough to understand the compelling need to compromise and reach back to us." Can you expand on that thought?

Mr Brown: I will try to use very carefully chosen words here because I do not want to add to either the rhetoric or the crisis that already exists in this country. I think they have done a great job of accelerating the rhetoric to staggering proportions already.

What I think happened was, first of all, the Prime Minister did not recognize that the country had matured beyond the point where it would allow a constitutional amendment without input from the people. Unwittingly so, I think that happened. It was not personally intended that way, but that is what happened.

Second, I think perhaps in trying to ensure his own party interests in terms of being re-elected he may have courted Quebec successfully because Quebec more than any other province tends to vote as a monolithic entity and it may have decided that it would support a majority Conservative government one more time. Of course, the price for that was the constitutional agreement that we are all faced with today.

The combination of these two things, partisan interests in trying to get re-elected and the exclusion of the Canadian people, may have proven fatal to our Confederation. They took party discipline one step further when they asked the premiers to go back to their own legislatures and tell them the deal was struck, it was a seamless web, it could not be changed and you could not have any meaningful input. You could criticize it all you wanted, but nobody was going to change one comma, undot one i or uncross one t.

Party discipline was used in all the parties, not just in the national party but in the Liberal Party and in the New Democratic Party, and it was successfully used to get it through a number of legislatures. I believe I would have to exempt your own Legislature because your province held public hearings on Meech Lake. I am not so sure that the decision still was not made prior to the hearings and that the hearings did not really change anything, but that is an assumption we will have to leave to a later date. I guess that is really what I mean by party discipline.

I think it is unfortunate that happened, but nevertheless the last argument they used that frightens me tremendously is that if English Canada rejects Meech Lake then it is rejecting Quebec.

Beyond a very small number of lunatics in this country who are admittedly racist, bigots or whatever—we always have those in any society—and short of a half a dozen I have seen on TV stomping all over the fleur-de-lis and a few Albertans who are properly called bigots because of their inability to have considered opinions and think carefully about what they say and the impact thereof, there was enough perception out there that the media focused on in Quebec, and I think the media in Quebec are deliberately fostering more and more of this by repeatedly showing the trampling of the fleur-de-lis and the rest of it.

This last thing is the most frightening and alarming thing that has happened. It really makes me fearful.

Mr Grandmaître: I have one short question. Can you address the compelling need to compromise and reach back to us? What did he mean by "reach back to us"?

Mr Brown: I have had four conversations with the Quebec Minister responsible for Canadian Intergovernmental Affairs since November of last year and at all times I have told him that I thought at some point in time we were going to have to compromise as Canadians. That is the favourite game that everyone wants to say Canadians are great at: compromise. I just do not see how people can for ever stand on two sides of an issue and say, "I will not move."

There seems only one inevitable result of those kinds of postures, and so I have told Mr Rémillard as sincerely as I can on a number of occasions that I think at some point in time we are going to say, "This is what we can live with in terms of a constitutional amendment that is good for the whole country," and hope that they are going to respond. His response has always been, "No position, no discussion until the ratification of Meech Lake."

Ms Hošek: I found your statements very interesting. One of the things I am concerned about in thinking about Senate reform is the impact of any proposed Senate reform on the fundamental character of parliamentary democracy.

Do you have any thoughts on what might happen to the actual working of any particular given bill when it has to go through a House of Commons and then a Senate? To be realistic about electability here, if the description you give of what it would take to be elected as a senator argues for someone with access to quite a lot of money and quite a lot of power, any senator would represent a larger number of people than any member of Parliament.

Mr Brown: Yes.

Ms Hošek: What I see when I describe that is Congress in the United States. I see basically a congressional system of brokerage and single-interest politics very strongly represented because of the need for money to get elected. I am not going to describe the American system any further to you. I am sure you have a very good sense of what it is.

What is to prevent our system, if it becomes what you describe as your goal, from being led inexorably by the realistic forces of democracy as we have it in Canada, election and so forth, and really tilting very strongly in the direction of a congressional system and no longer a parliamentary one where responsibility is vested in a cabinet and there is cabinet solidarity and a government can fall because of votes in the House of Commons?

I am concerned about creating a hybrid which will have even more problems than the problems we already have. I am interested in your view of this, whether you have considered it and whether my description about what might happen makes any sense to you.

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Mr Brown: That is a pretty complex question and I will try to keep the answer as brief as possible. It is not easy. First of all, I am not afraid of hybrids. Not to give a farm analogy, but I dealt with the crossbred cattle when they were brought over from France and the hybrid in almost all instances turns out to be a better product than the inbreeding or whatever that has gone on in the agriculture industry over years. I would not say that we should reject out of hand any influence of the Americans because we have already adopted some of their things and some of them are very good. I would certainly not want to see this country adopt some of the problems that the Americans have.

First of all, our triple E Senate is not to change the parliamentary system to a congressional system, but more closely resemble the Australian experience in all respects. I would suggest, to make any definitive studies, you should study the Australian experience far more closely than focus on the American.

Certainly, there would be some kind of brokerage politics, but I think beneficial brokerage politics. Let me build you a scenario where the people of Alberta were most profoundly concerned about the national energy program the last time around. They are not without belief that it might happen again. Let us say that we have this hypothetical triple E Senate in place. I do not believe we would prevent another national energy program in its entirety, but then in bringing forward a bill to the House of Commons that is as destructive to the industry as the national energy program was to the Alberta energy industry, the senators from Alberta would begin to lobby the senators from Saskatchewan, which has some energy interests; British Columbia has some offshore energy interests; Newfoundland has some offshore energy interests; certainly, the Territories have some interest in energy and they would be trying to build a majority in the Senate.

In the corridors of Parliament there would certainly be some discussions which would be going on between the senators and the members of Parliament. These senators would be saying: "Hey fellas, you had better forget it. If you come forward with another bill like the last one, it is never going to make it through the Senate." I think in legitimate response to that the House would begin to react and say: "Okay, we cannot have a bill that just completely goes in one direction as much as the last one did. We had better be flexible."

I think you would see your House of Commons design better legislation before it ever came to the floor of the House of Commons. In fact, you would not have things like the goods and services tax that we have right now. The Senate has one of two choices: reject it or try to amend it, or let it happen in spite of the fact that the majority of Canadians do not want it. I think the Senate would have already exercised its influence over the GST and it would have been changed in some manner. I will not try to tell you what that manner would be.

That is what I see, and I do not see brokerage politics as being always bad. For instance, we see in the United States, in the aviation industry, the largest manufacturer of aircraft is located in Seattle, Washington, which is admittedly one of the smaller, least-populated states in the American union. I have to ask myself, "Under what sort of influence did that industry end up in that state?" In our experience, that industry would be somewhere very close to Metropolitan Toronto. I guess I would say that, not that it should never be close to Toronto, but that not all industry be there.

I say it in my paper, I do not think ultimately it is good for your own environment that we for ever concentrate everything in one area. I think you are experiencing a bust in your inflationary real estate values in the last couple of months that are going to hurt your own people. They have tied themselves into long-term mortgages that they cannot afford, and I know what happened in Calgary. People walked away from their homes because they tied into something they just could not stay with.

Ms Hošek: I find what you are saying very interesting, because I think what you just said about the GST was that you believe that the Senate, which is structured not to represent the majority in the sort of simple way that the House of Commons does, would be able to stop a bill that the majority of the public does not like, better than would the House of Commons, which is supposed to represent the majority, be able to stop it. I guess what you must be talking about there is party discipline. There is not the same kind of party discipline in the Senate.

Mr Brown: I think party discipline in this country has been carried to the point where it is an obscenity. It is completely possible for the Prime Minister of this country to decide an issue himself that is very important and then take it to the inner cabinet—and the inner cabinet has ambitions of its own. I mean, these people are at the pinnacle of political success in this country and, if nothing else, they want to maintain their positions.

So if the Prime Minister of any party—and I am not focusing on the current Prime Minister; I am talking hypothetically about any Prime Minister—comes out strongly on an issue, who in the inner cabinet has enough intestinal fortitude to put his career on the line to say, "Mr Prime Minister, this is not good for the country and I will not stand for it." He is likely to get a telephone call at 2 o'clock in the morning saying, "I am sorry, but I no longer need your services in cabinet."

So then he goes into the outer cabinet, if you will, which is 40-odd cabinet ministers, and of those junior ministers, most of whom probably would like to be senior ministers and would like to be in the inner cabinet—which ones of those are going to put their career on the line to oppose something?

Then you go to caucus, where I am sure all of those people would like to be either a parliamentary secretary or would like to be a part of some committee and would like to have all the benefits of travel and all the other perks that go along with it. So I sometimes have to ask myself, what have you got in terms of representation for you effectively in the House of Commons.

Again, I do not mean to focus negatively on one party. I happen to be a Progressive Conservative, but I have problems with what is happening there now. I had problems with Mr Trudeau and the same kind of extreme exercise of party discipline. Once again I would say that if we had these senators who were willing to fight for the provincial interests of even Ontarians, and they went out in public and called up the newspaper and said, "I am opposed to this bill and I want to know how many people in this province agree with me," and they began to find out, I think the member of Parliament would have to turn to his Prime Minister and say, "You can talk to me about party discipline all you want, but unless I get out and fight for the interests of my own constituents, I am not going to be here next time for you to discipline me anyway."

The Chair: On that very positive note, we had a former colleague, unfortunately deceased, who made a comment, and it was repeated in the House of Commons, about politicians being limited by ambition. Perhaps that is what you are referring to. Mr Polsinelli, a very short question, please.

Mr Polsinelli: Why a very short one?

The Chair: Because we are almost out of time.

Mr Polsinelli: Mr Chairman, you should stop commenting on my height.

The Chair: I feel I can do it all right.

Mr Polsinelli: Mr Brown, I would like to thank you for your presentation, and I say there may be some in this House who do not question your comments on party discipline, but that is a discussion for another day.

The reason for a triple E design, in your words, is "For a counter balance to offset the unfairly weighted influence given to populous provinces which allow interests of both the western and Atlantic regions to be effectively ignored when national decisions are made." Essentially you are saying we need a triple E Senate to take care of regional disparities.

I think it is important, if we look at that being the fundamental reason for a reformed Senate, that we look at the existing institutions which supposedly are there to address regional disparities. I just sort of jotted down a few things that came to mind. One of them is the British North America Act, for example, and the division of powers, sections 91 and 92, between the federal and provincial governments. Essentially that is there to handle regional differences.

We look at things such as first ministers' conferences where each of the first ministers of the provinces and the Prime Minister of Canada get together on a regular basis and discuss national concerns. That is an institution which has been in a certain sense constitutionally entrenched. Some have even argued that it is almost another form of government. That is there to handle regional disparities and regional interests.

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Perhaps in our system of executive federalism what we should be looking at is the representation of the various regions in the federal cabinet. I have just been asking some of my colleagues and they tell me that roughly one third, if not more, of the existing federal cabinet is from the western region. If you add the Atlantic ministers in that equation, you are probably looking at more than 50% of the federal cabinet being from the Atlantic region or the western region. Now surely that is one institution that should address regional disparities.

You are telling us that a reformed Senate is needed because those institutions are not adequately addressing regional disparities. If I accept that, and we go back to your location of industry, surely location of industry is not determined by a reformed Senate. If we look at the handing out of the CF-18 contract, that would not have changed if we had had a triple E Senate. Would you comment on those points?

Mr Brown: Yes. Again, the first one last. I would just say that under a triple E Senate the executive order in council, which I believe is what actually happened in the CF-18 contract, might happen, but there would have been an awful lot of western senators saying, "Okay, you get away with this one, but if you once again override the interests of Winnipeg, there will be a price."

Mr Polsinelli: What price?

Mr Brown: The price is that on any other bills that might affect western interests they will harden their position, I suppose. I cannot build you all of the hypothetical things in there, but the counterbalance is just that: it is the idea that if you exert more than the kind of will you should in one area, the resistance in another area will build. I cannot lay out the specifics of every reaction and interaction of a Senate and the House, but a counterbalance is just that: the idea that the decision-making will not for ever be weighted on one side, but will have to sometimes come back to an equilibrium.

I would challenge you directly on one statement you made, and that was that the first ministers' conferences are constitutionally entrenched. The first ministers' conferences are by precedent entrenched in the minds of Canadians—

Mr Polsinelli: Meech Lake.

Mr Brown: —but unless I am sadly mistaken, there is no constitutional power as yet behind the first ministers' conferences. While the perception is that the Prime Minister sits at the table with 10 equal provincial premiers, in reality there is only one vote at that table. When the discussion and the debate, as heated or as civil as it may be, is over with and they rise from the table, they all know there is only one vote and the Prime Minister holds that vote.

Mr Polsinelli: The constitutional entrenchment of the first ministers' conferences will be a result of Meech Lake, which requires an annual first ministers' meeting. But essentially, then, your response tells me that what you are challenging is the whole concept of executive federalism.

If you are saying that all the decisions are made by the Prime Minister and it does not matter that 50% of the cabinet is from the Atlantic or western regions, all the decisions are made by the Prime Minister, you are challenging our whole concept of executive federalism. You are saying: "Our system doesn't work. Let's scrap it; let's start again." You do not want just a reform of the Senate; you want a complete reform.

Mr Brown: No, I do not. I want reform of the Senate so that we can change executive federalism and not carry it to the extremes that it has been carried. I do not want to scrap anything. The Senate we have already exists today. I want it to become elected and equal. I am perfectly happy to leave it with the powers that it has. Some other people might not be happy with that, but that is what I want.

This design for a country was designed at the articles of Confederation. It is not something new. I do not want to just throw out executive federalism completely. I want some kind of a counterbalance to it, a moderate counterbalance to it. I have to reiterate, I do not see in a reformed Senate always that one province would for ever be able to thwart the will of any other province. They would always have to have a democratic majority represented by the number of partners in Confederation. This is all I see.

The Chair: Thank you very much. On that, we will conclude this part of the presentation. We have certainly appreciated the sharing of your experience in this issue with us and advising us of the recommendations of your committee. I know they will be most helpful as we deliberate in the next couple of months. Thank you very much for coming. You are invited to stay to hear David Elton. We will, as you know, be bringing in a short lunch and perhaps members can speak to you personally.

CANADA WEST FOUNDATION

The Chair: Our next presenter will be Dr David Elston, president of the Canada West Foundation. Welcome to the committee. You were here when we commenced our proceedings so I guess you understand the process we are following. The floor

is yours for an opening statement and then we will put some questions to you.

Dr Elton: As I sat behind my friend Bert and listened to the questions asked, having been someone who has studied this subject for a long time, there were a lot of those questions I would have loved to have answered so I hope they will be forthcoming again, particularly when we get into something as dear to my heart as executive federalism.

However, I will proceed by making some comments basically in three areas.

First, I would like to introduce the whole area of the rationale for Senate reform. I know you have heard from a lot of people about specifics, about the triple E and so on, but I would like to go back to the basics. Much as we do in any sport or endeavour, we have to go back to the principles and the ideas behind what it is we are trying to achieve.

Second, I want to take three short quotes from a document that was circulated to all members of the Ontario provincial Legislature some years ago now and I think you will see why they are relevant in the current context.

Third, I want to talk about alternative solutions to the problems that we see facing Canada other than Senate reform and why it is that we have come to the conclusion that Senate reform is the way to go.

Fourth, I want to make a couple of comments about Senate reform and the Meech goings on.

To start from that last point back to my introduction, I should say that I have been one of those who have followed with great interest the negotiations among the first ministers with regard to Meech and the Senate. I think it is quite important that while we in western Canada on a daily basis obtain the editorial wisdom of people in Toronto through the Globe and Mail, it is not often that you have the opportunity to obtain the insights that our editorial writers provide western Canadians.

I want to just take two short quotes from the Calgary Sun of yesterday morning to give you a flavour of those editorial writers. As we all know, you can pick and choose your editorial writers to pretty well obtain whatever point of view you want, but this is the point of view that they had and it is one that seems to me to reflect rather well the western Canadians that I have had discussions with over the last decade-plus on Senate reform.

The editorial is headed "Right Stands" and it reads:

"Newfoundland's Clyde Wells and Manitoba's Gary Filmon are absolutely right in insisting Quebec commit itself to Senate reform before any agreement to pass the Meech Lake accord is reached." That is the introductory sentence and statement.

The third paragraph down reads: "Let's face facts: an equal elected Senate will dilute the overwhelming power of central Canada. In doing so, it will bring fairness to Confederation. Small provinces such as Newfoundland and Prince Edward Island will be treated with more respect and under reform the plundering and pillaging of Alberta's energy resources could never have taken place." Editorial licence is evident, I think.

It gives you a flavour for the kind of exposure that western Canadians have to this issue and their view of Senate reform, at least as these editorial writers have depicted it.

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Let me then give you my view of the rationale for Senate reform. What are the basic objectives? I think they have been established by Ontarians in particular over the last 15 years. If we take a look at the Pepin-Robarts Task Force on Canadian Unity, Robarts being a former Premier of this province, they identified quite clearly the need for Senate reform and the problems we have with a set of institutions and a concept that, while maybe having served us well for a century, are clearly not functioning well now, and I am speaking specifically of the parliamentary system and all of its baggage and the federal system as practised in Canada. The Pepin-Robarts task force put its thumb on the issue. They identified it. It is not something new. We have known for 15 years what the problem is, if you have read that task force report, and most of us have.

That was reinforced by the joint House-Senate committee report on the Senate in the early 1970s. They concluded the same thing: there is a problem out there; it needs to be resolved; regional alienation is real; it is well founded in addition to being perceptual; there have been instances, many or few depending on the year or the decade, where clearly this country has acted in an inequitable way to people who live in some parts of the country. It has worked that way. We know it; we can point to them.

More recently, the Alberta legislative committee report Strengthening Canada: Reform of Canada's Senate which I see some of you have on your desks here, in 1984-85 came to the same conclusion and identified the same problems. Look at the Macdonald Royal Commission on Economic Union and Development Prospects for Canada. Donald Macdonald is not a western Canadian. Although his wife is a western Canadian, he is not. Clearly he saw the same problem. That commission saw the same problem and identified the same problem: a political system that is no longer functioning, if it ever did, in a way that is satisfactory to meet the needs of all Canadians regardless of where they live.

This has generated what is often referred to in the central Canadian media as western alienation. It is deep-seated, it is not recent and if anything it has increased over the last 20 years. It did not go away with the election of a Conservative government in 1984 for reasons that Conservative government put in place subsequent to its election. It is long term; it is non-partisan; it is a sense that the country is not working well enough.

I am just in the process of completing a review of a new book that has come out based on a conference that was held at York University to recognize in my view probably one of Canada's finest political scientists, Donald Smiley, who taught at York University for the last decade of his career and just recently passed away. In that book the former head of Queen's University, Ron Watts, addresses the whole issue of institutional structures in this country. It is very worthwhile to read the conclusion to his article presented at that conference which is now in this book, where he concludes that executive federalism is no longer working.

Donald Smiley coined the phrase "executive federalism." It is now used throughout the world in all federal systems to talk about the interactions between heads of governments, regional and national, and their interactions with each other. It is no longer working as it should and I would be glad to discuss that in our question-and-answer period. Dr Watts puts his finger on the problem. He says, what Canadians have to face is that their parliamentary system is not working well; their federal system is not working well; Meech Lake is but a symbol of that underlying disease in the system. It needs to be restructured.

Senate reform at its very core is intended to help the system restructure itself because institutions are not just rules; institutions are ways of behaving. When you change some of the rules, you automatically change the way people work within that set of parameters. Do not misunderstand me at all: Senate reform is intended to trigger a dynamic set of changes within

the Canadian parliamentary system from top to bottom. It is intended to do that in the best interests of all Canadians, not just those of us who live close to the Rocky Mountains, not just those of us who live close to the Atlantic Ocean, but all Canadians.

We really believe this is a way of strengthening Canada, of making it a better governing system. That is the primary objective of Senate reform. The details we talk about to try to achieve the best possible mix, but the primary objective is to restructure the political institutions of this country in a meaningful way to reflect the concerns of all Canadians.

Now the quotes. This is a document that was sent to those of you who are sitting in the Ontario Legislature. You received this document prior to the Meech Lake negotiations and I bring this in the context purposely. This was published in March 1977 just prior to the first ministers' meeting.

It deals in a concrete way with what Senate reform is all about, looking at it within the context of the primary concern of western Canadians, which is their ability to get on and meet the aspirations that they have for themselves, for their children and for the country in which they live.

Why is it that western Canada or Atlantic Canada generally lose in national politics? What is it about this system that is not working well? Let me just read a couple of quotes.

"Western Canadians have often been naïve as to how to protect their interests in national politics. Politically, many seem to be slow learners. Too often and for too long the sentiment has been that majority rule is acceptable so long as the majority is well-meaning and the leadership is sound. The unfortunate outcome of national majority decisions over most of the last century has tended to be explained away by two partially overlapping themes:

"First, the 'bad-man theory,' of which the basic idea is that there is nothing wrong with the Canadian government except for the people who happen to be in power (whether this is thought to be the Prime Minister himself in the person of Pierre Trudeau or Brian Mulroney or the 'French power' group or the Liberal or Conservative Party generally)." The idea is the wrong guys are there; if we just change the people in power the system will work better. That is the "bad-man theory." "If we could just exorcise their malevolent influence, all would be well." Problem solved, change the people.

"Second, the 'good-man theory,'—notice bad-man theory; good-man theory—"of which the basic idea is that all the west needs to do is to elect the right kind of people (preferably to the government benches), after which it would inevitably follow that the national government, apprised of the concerns of the west, would move quickly and fairly to respond to them.

"It is the convergence of these two theories in the context of the 1984 election that created the mood of optimism that prevailed in the west when the Mulroney government came to power." The good guys were in. "The unrealistic heights of those expectations are themselves one reason for the increasing bitterness and the new depths of disillusionment that many westerners are experiencing. The operation of existing policies and the creation (or omission) of new ones simply continues to favour the interests of central Canada. It is not that westerners have not been treated this way before, because they have never been treated any other way. It is just that they rather naïvely expected more from this government and now," that they did not get it, "they are angry both at the government for not living up to those hopes and at themselves for being so naïve."

This is the second quote:

"The cause of the west's" alienation "is neither malevolence at the top nor incompetence on the part of western MPs, but rather the basic logic of Canada's national institutions. The problem can be summed up in a simple syllogism: (a) parliamentary democracy is designed to operate in a society which is basically homogeneous; (b) Canadian society is not homogeneous; (c) therefore Canada is not the kind of society in which parliamentary democracy was designed to operate.

"Put succinctly, majority rule, the doctrine that the preferences of 51 shall prevail over those of 49, is acceptable only where the 51 do not differ significantly from the 49 and where members of the 51 and the 49 change places regularly on different questions. Wherever this condition does not exist, majority rule must be qualified and restricted."

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The fundamental principle for the structuring of Canada in 1867, the fundamental rationale for the creation of the concept of federalism, is to check the tyranny of the majority. Quote number 3: "The term 'the national interest' often takes on ominous overtones for western Canadians. When they hear it invoked, it is much like getting a phone call and being asked if you are sitting down." You know the news is on its way and it is inevitably bad.

Ms Hošek: Could you please remind me who is the author of the quote that talked about parliamentary democracy and homogeneity, the second to last one that you read?

Dr Elton: You are looking at him. I am quoting a document that I wrote with Peter McCormick that we circulated quite widely in 1987. By the way, when I say that is my quote, it is only my quote in the sense that I wrote those particular words. That idea has been around for centuries. I do not claim authorship to it at all.

Ms Hošek: I understand that. Thank you very much for it. I am very interested in it and I am interested in how you define the homogeneity that works in parliamentary democracies.

You are right about Canada not being a homogeneous place, but there are a variety of ways in which that is true. It is true in terms of region, it is true in terms of the background and the linguistic background of people, it is true in terms of race, it is true on any number of fronts. It is a very radical statement to make.

I guess I am asking you to tell me more about what you mean by homogeneity, and whether, by this particular statement, you are saying that any multicultural or multiracial society, for example, cannot function well in a parliamentary system.

Dr Elton: There is no society that is completely homogeneous. I am sure there is not even a family that is completely homogeneous. You do not want to—

Ms Hošek: Not even individual people are the same throughout.

Dr Elton: Yes, that is right, much less logical. I think you can push these things too far. The point that we are trying to get across here is that the parliamentary system was designed to operate in the England of several centuries ago. We have adapted it, modified it, updated it and done a pretty good job in a lot of ways. Do not get me wrong. I am not totally negative on the parliamentary system. Our parliamentary system is different from anyone else's, and in some ways it is worse than some of

the others in terms of party discipline and a number of other factors we could talk about.

I am simply saying that there was a very good reason why by 1867, after a lot of experience with parliamentary systems and after trying to understand what had been taking place in our part of the world where we developed unique institutions, Canadians had come—rightly so, in my view—to the conclusion that a parliamentary system in and of itself would not work in this country. Parliamentary systems assume a unitary system of government. They assume that somehow in this nation there is enough homogeneity that there can be one central governing body in which all sovereignty resides.

What we decided in 1867 and are still very convinced of at the present time, and indeed, if anything, going in the other direction, is that that will not work here in Canada because we are not homogeneous enough. We need to know that there will be in some instances regional governments which have sovereign powers—that is what federalism means—to deal with the concerns of their citizens in a slightly different way from the way some other corner of the country might decide to deal with its citizens.

That is the power, as I understand it, of the Ontario government as compared to British Columbia or Nova Scotia. You can deal with education in a different way and you do. That right was given you because you as Ontarians may want to deal with those things differently from the way Albertans do. It is in that context that I am saying we recognized a long time ago that in Canada, on many issues, you cannot have a central government making decisions on the basis of majority rule.

But there is a second critical element to a federal system that we have never adapted or adopted. First, we had to adopt it and then we should have adapted it, but we have never done either. A federal system assumes that within the national government people are represented on the basis of two criteria—not on three, not on a dozen, not on ethnicity, not on religion, not on language, not on native rights, but on the basis of two criteria: one man, one vote and equal representation of meaningful regional entities.

In this country, in the 20th century, there is only one meaningful regional entity, and that is a province. We have never had within our national government a means of representing provinces. That is what Senate reform is all about.

Ms Hošek: I would quarrel with you about the meaningful regional entities, although I understand the reason you are making the cases you are making. It seems to me, for example, that every single province replicates the kind of stress that Canada feels in relation to large urban centres and the rest of the country. It replicates it internally so that in Manitoba there is Winnipeg and the rest; in Alberta there are the urban centres and the rural and northern areas.

If you are going to talk about meaningful regional entities, I would put on the table that perhaps for the purposes of Senate representation there should be a guarantee of equality of representation from northern and sparsely populated areas together with metropolitan ones. I would argue that that would certainly make it much more likely that our first nations would be more adequately represented in the Senate.

I think we have defined homogeneity as really having to do with the struggle between persons and land base, if that makes any sense, land masses. If that is your principle, I think the next one you might want to consider is northernness or ruralness versus the urban, because all of us here in Ontario, as members, struggle with the perception of all the members who are not from the central Toronto region that somehow Toronto gets everything and the rural areas and the more sparsely populated northern areas do not.

Interjection: It is true.

Ms Hošek: I am not saying it is or is not. I am saying that the struggle is there, and if we are talking about land and fewer people and larger pieces of land, why would you not take that next step of saying, should every Senator from Manitoba come from Winnipeg or not? How do you deal with that? And what do you think about that as meaningful space, if that makes any sense?

Dr Elton: One of the things that Bert Brown said earlier that I concur with wholeheartedly is that you cannot solve all the problems with Senate reform. We do not intend to.

Ms Hošek: Why not add a few?

Dr Elton: What you are suggesting and what we are talking about here is a national government and how a national government should or should not function and what it should or should not be able to represent within its legislative institutions, not within its bureaucracy, not within the cabinet, not within any of its agencies or boards, but legislatively.

It is embarrassing to me when I run into someone from another country who asks me about Canada's Senate. They say to me, "This is a legislative body?" I say yes and they say, "How did you say they were appointed?" I tell them and they say, "And you call yourself a democracy?" There are a lot of problems there. We are talking about a legislative representative body.

When we talk about provinces as being meaningful entities, think about what is really important to people in terms of their government. What do governments do these days anyway? They provide money for sporting events and encourage those sporting events. They provide money for cultural organizations and encourage those cultural organizations. They provide all kinds of professional services and regulate those professional services, education, the list goes on and on, and how do we do it?

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All of those things are done on a provincial basis, not city by city, not town by town, not farm by farm, but province by province. When you think of the way Canadians are organized, whether it is our interest groups, our sporting groups, our cultural groups, our economic groups, our professional groups, you name it, they are organized on a provincial and a national basis. Those are the meaningful organizational structures with which governments must deal.

Thus the conclusion that provinces are the only meaningful regional entities in a political sense. They have done that. We talk about a concept of province-building over the last century. In Ontario, in Saskatchewan, in Manitoba, we have been building provinces into meaningful political entities. Yet we still do not allow the people of those provinces, as provincial citizens, to be adequately represented within our national institutions.

We hang on to the most archaic, the most distorted and the most irrational mix of representation within this supposed body that is meant to represent provinces, called the Senate, that you could contrive. I do not think anyone could contrive a more imbalanced method of representation than what we currently have in our Senate, putting aside for a moment the way in which they get there.

Mr Allen: I appreciate very much your presentation with its focus upon central principles and the direction of Senate reform as distinct from the details of specific proposals. I certainly wholeheartedly agree with the notion that good-guy/bad-guy politics are not particularly effective from any standpoint of political realism and that there is probably more than one perspective from which one can examine this country and ask whether there is not need for significant structural change.

I remain somewhat puzzled by some aspects of the arguments around Senate reform and questions of regional representation. When I consider the fact that in reality the provinces today are substantially more powerful entities than they were expected to be in 1867, inasmuch as certain of the jurisdictional concerns of the provinces—social services, education, a whole range of items—have become much higher priority issues than anybody ever thought they would be in 1867. These concerns have become the responsibilities of these governments, and as a result, these governments collect and spend a heck of a lot more money than anybody ever thought they would and their place in the federation has become massively more significant than anybody ever thought it would.

In other words, in spite of the applications of parliamentary unitarianism, if I can use that language, in 1867, we in fact have a much more decentralized, diversified and powerfully based provincial system than was intended.

We also have within our political parties constant tradeoffs east and west. I only have to think of my own party's wrestling with the Meech Lake question and the resolution that we had to come up with as a reflection of that, literally east meeting west or whatever, and a very ambiguous formulation as a result, but none the less one that was more workable than probably any position that would have reflected either of the components.

There is a certain weighting in representation in the House of Commons. There is certainly always in cabinets a very difficult process, an energetic one, to define regional representation within cabinets, federally speaking. To turn the whole argument inside out, one could almost argue that the attempt to construct a triple E Senate is a logical outgrowth not of the weakening of regions and provinces but of their increasing strength and their desire for more power within the system.

I recognize that that sort of shades and fudges some of the economic consequences of what has happened in the dynamic of Canadian economic development. But what I do not understand entirely is how the additional power and force in the Senate is going to significantly alter the overall parameters and dynamic of the Canadian economy, which has really been the element that has played adversely to the maritime region and to the prairie region in particular. I see a negative argument.

Maybe you could block another national energy policy—I do not know whether that is good or bad, there are conflicting interests in energy. But is one arguing then that the Senate would take on a positive role of becoming a major instrument of interventionism to diversify Canadian investment and to require a certain proportion of investment in western Canada or the Maritimes or to relocate industry energetically in a very interventionist fashion, so that one has a much more directed economy?

That does not seem to me to be in keeping with some of the prime movers behind the objections to the national energy policy, because they obviously philosophically and ideologically go in another direction. I am left with this sort of ambivalent element of, on the one hand, the thrust of power of provinces and, on the other hand, the interplay with declining economic fortunes and the dynamic of the national economy. I do not quite see how they come together either ideologically or functionally. Can you help me?

Dr Elton: Yes, I sure can. It is found in sections 91 and 92 of the British North America Act and it is called the division of powers. Western Canadians, whether they are Saskatchewanites or British Columbians or whatever, or Newfoundlanders have problems with their provincial government and the way that provincial government deals with education and professional groups and so forth. We all have those problems in our own communities and we deal with them within the confines of the province and the provincial political process. Within those section 92 areas of jurisdiction, that is what the provinces deal with.

First ministers and executive federalism deal with the interactions between those provinces and the national government. They are there to co-ordinate and to facilitate those governments in dealing with problems to the extent that they can on a joint basis.

There is another whole set of problems and it is in that area. You have this parcel of provincial activity, joint activity, and then you have national policymaking, jurisdiction of the national government. If you look closely at the frustrations of western Canadians and Atlantic Canadians, it is in this third bundle of activities, this third area that they are so concerned. We recognized a long time ago that regardless of how much power our provincial government has, it cannot deal with matters that are of a national jurisdiction. It cannot impose its own tariff policies. It cannot regulate or have any impact on a national budget that imposes a national energy program.

Here I refer very directly to what I refer to as the conversion of Peter Lougheed—and it was a conversion. From 1971 until November 1980, Peter Lougheed had no truck or trade, no time or interest in Senate reform. We had talked with him, discussed with him, presented him whatever arguments we could think of, saying, "Peter, the day will come," and he said: "No, it won't. I believe in executive federalism. I believe I can, as Premier of this province, with other premiers, negotiate with the national government on anything that is critical to our province and to its future and to the people of this province and of the other Canadian provinces."

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When the national energy policy was proclaimed, Peter Lougheed was converted to Senate reform because he recognized that he, like every other Canadian outside that small group that Bert talked about this morning of the inner cabinet and their advisers, found out about a national program that was going to devastate everything he had been trying to build for a decade. He had no control, no regulation, and whatever input he had into it did not turn out to be very meaningful. He was converted to Senate reform.

That is what Senate reform is all about. It is recognition that in that third area, with regard to national jurisdiction, national government programs and policies, there needs to be a balance in this country. The government in Ottawa is only national in name; in function, it is a regional government. It is controlled by a majority. That majority rests in central Canada, and that does not mean that it does not deal with some of our problems some of the time in good ways. It does not mean that we always get the short end of the stick. It means that when it really counts, we will be asked to wait until next time; witness the point that I never got to in my opening remarks, the Meech Lake accord. "Next time, folks. Next time, fellas, it will be your

turn. Wait." Western Canada and Atlantic Canada have been waiting for a century.

Mr Allen: I was going to ask you about Peter Lougheed, because I did know that he had opposed the Senate reform and I can appreciate how the NEP would have changed his mind. But he did make a point that some of us have been curious about, that his argument was not just that he did not see the necessity of Senate reform. It was also that Senate reform would detract from the exercise of power by first ministers through executive federalism.

Dr Elton: To some extent it will.

Mr Allen: Yes, and that is the question.

Dr Elton: I think it will. I think that is good.

Mr Allen: Okay, that is fine, but please come back to the other part of my question. Apart from sort of blocking central Canadian power through the majoritarianism of the Commons in order to impose such things as the NEP, how do you see the Senate in fact fostering a much more diversified, equalized economy in Canada? I recognize, for example, the point of Mr Brown that the significant part of the whole exercise is perception of fairness and a forum in which one can have the feeling that one has been heard and has played one's best shots.

None the less, if that simply is a temporary disguise for a failure to significantly remedy the balance of the Canadian economy, then the frustration will break out all over again, and this time it will be with not just the failure of a predominantly western Conservative government to redress the situation, but it will be the failure of a triple E Senate to redress the failure, and then the alienation goes even further.

So how does this impact on the dynamics of the Canadian economy in an effective enough fashion that it alters the balance of the Canadian economy to the benefit, in significant measure, of prairie people and maritime people?

Dr Elton: I think you are getting at a point that I would really like to address, and I hope I answer your question. We are really talking about whether or not Senate reform is simply a naysayer's option—someone who wishes to block things, to make sure that bad things do not happen—and that it does not have another component to it. I do not see Senate reform in that context at all.

I see Senate reform as changing our set of institutions so that we can deal more positively, more creatively and more constructively with whatever economic issue we have at hand. I am one of those people who believes that the national energy policy could have been made better. It could have had a better mix of items in it, a better recognition of the concerns and the aspirations and the opportunities in western Canada. The national energy program designated the north and Atlantic Canada as Canada lands, as though somehow Alberta, Saskatchewan and British Columbia were not part of Canada. Take a look at it. It is really quite interesting. What a way to phrase things. That policy could have been adapted. It could have been transformed somewhat to meet the needs of all Canadians and, as a result, to have allowed us to produce better, more effectively and distribute more equitably the resource rents that were generated from those resources over that period of time.

I believe the existence of a triple E Senate would have facilitated, would have increased the likelihood—not guaranteed—that the national program, the national policy, the specifics of that budget would have met the needs of Canadians better and we would all be better off as a result of it today. You would be wealthier here in Ontario, we would be wealthier in Alberta and the people in Newfoundland would be wealthier because the actual legislation would have been better structured.

I have used one example. There is also transportation policy. Agriculture policy, which is really bothering us at the present time—I believe one of the reasons it is not structured very well is that we do not have this adequate mix of representation from people who are involved in the producing and the consuming and the regulating of those processes.

I can go on far beyond those three examples. Whatever the policy is, what we are arguing is that if you have a better way of representing the real nature of this country within those national institutions, you will come up with better policies, better programs, better legislation.

Mr Epp: Mr Elton, I really appreciate your coming before the committee and I understand the concerns and the frustrations that westerners have felt. I think that a lot of those concerns and frustrations are very legitimate. They have been there for generations and I think they need to be addressed. I am not, however, convinced that the triple E Senate will address those concerns.

One of my concerns, of course, is that in trying to address it, we may be building many more problems into the system in the future than we will be solving, in the same manner that many people thought that Meech Lake was going to solve a lot of problems for us. I am not so sure that it will solve all of the problems that we had originally thought it was going to solve, to the same extent that when we gave up on the British North America Act and brought in a new constitution, Mr Trudeau warned us years ago that we might be biting off something that we would regret in the future. Of course, I very much wanted to bring home our own constitution and have total control in Canada, as opposed to going to the British Parliament. I am not so sure that what we did was totally wise.

This seems to be the morning when everybody is down on executive federalism, and really what we are talking about here is maybe a form of benevolent dictatorship. And I am not so sure it is so benevolent, because when you are talking about executive federalism, you are talking about this small group of people who tend to control things.

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Then Mr Brown indicated earlier that there is actually only one vote at the table and that is the Prime Minister's. Well, that is not executive federalism either, because you have Mr Mazankowski from Alberta and you have Mr Clark there, two very powerful figures in the Canadian political mosaic, and one was a former Prime Minister. Were things a lot better when he was Prime Minister than they are now when your Prime Minister is coming from Quebec?

When you are talking about this executive federalism, you have this small group. Why does Alberta not have more clout, or is it dictatorship, as you almost imply but do not state?

Dr Elton: I am down on executive federalism as being the solution to Canada's federal system; I am not down on executive federalism per se. I think it performs some very useful functions—the co-ordination, integration, the five-year financial plans, it goes on and on. This is a wonderful success story for Canada in terms of the way in which provinces and the federal government, as government has expanded dramatically over the last three decades, to be able to hold the whole thing

together. I think they take a lot of credit for it, so do not misunderstand me.

I am simply saying that executive federalism, like the Parliament, has its place. It deals with some things very well, and with other things it deals very poorly. What we are trying to do is to find a mechanism that will deal with those things that it cannot deal with. I have given some examples of that with regard to Mr Lougheed's conversion. I am not sure he would like that phrase at all, but being someone who was involved with him both before and after that conversion, I call it a conversion. He certainly would not, I am sure.

As for Mr Clark and Mr Mazankowski, Bert's question was, when was there someone in the inner cabinet or the cabinet who resigned on principle? The answer is, 10 days ago. Lucien Bouchard did it. Prior to that, when was the next example? Go back to 1963.

Interjection: René Lévesque.

Dr Elton: René Lévesque did not resign from a cabinet.

Mr Epp: John Turner in 1974.

Dr Elton: John Turner resigned due to family reasons, as we know.

If you go back to a person who did so on the basis that he thought he was representing the people who elected him, and that was the criterion he used, it is Harkness, 1963. Here we have, once every three decades, someone in the inner circle who resigns on the basis of principle. Are we to assume from this that only once every three decades a cabinet minister finds that what the government is doing is not in the best interests of his constituents? Hardly. I do not believe that is the case.

Mr Epp: Let me just make a point here. Maybe you did not mean this, but I do not think that when you are a cabinet minister you should be representing your constituents. You are representing the country, unless you think the constituency is the country.

When you are Minister of National Defence, as Mr Harkness was, or you are Minister of the Environment, if you are going to represent your constituents as a minister, then that environmental project may not go into your constituency and you have to be concerned about the—your constituency is the country.

Dr Elton: If your constituency is the country, then you have made my point for me. Mr Mazankowski's constituency is then what?

Mr Epp: It is Canada, as the minister.

Dr Elton: But it is not Alberta, is it? Mr Clark's constituency is what?

Mr Polsinelli: Would you want any minister with such a narrow focus?

Dr Elton: Exactly, but he is making the point. My point is simply to point out the limits of the logic that you are using. If, when someone becomes a cabinet minister, he can only represent the interests of the country, then de facto he can no longer represent the interests of the region from which he was elected. Thus, cabinet ministers cannot represent regions.

Mr Epp: I do not want to argue with you on this, but he has a dual function.

Dr Elton: I agree.

Mr Epp: He has a function as a local constituency person, as a member representing that. He also has an equal function to represent the country, whether it is the environment, finance, defence or whatever, so he has a dual function in that forum.

Dr Elton: Here is the point I am trying to make in a little different context, because obviously I am not making it in this one.

One of the problems that we have in western Canada when we elect a member of Parliament who is to represent us is we have this belief that he is going down to Ottawa to represent us. But with two notable exceptions of the last few weeks from Alberta, and these are two of the only exceptions you can find in more than a decade, western Canadians, Atlantic Canadians and, I am sure, a lot of people in downtown Toronto, a lot of constituents, get the feeling that these people really end up representing Ottawa to them, not looking after their interests in Ottawa but looking after Ottawa's interests in you name the constituency. What we have done because of party discipline, because of the way in which our parliamentary system has functioned, is we have flipped, we have distorted dramatically the representation process. So now what members of Parliament, and sometimes members of the Legislative Assembly and MPPs too, end up doing is representing their government to their constituents.

It is not that that should always be simply one way. Not at all. But it has to do with the thrust of that representation. When someone who lives in High River, Chicoutimi or wherever gets the feeling that his member of Parliament is now representing Ottawa to him, then the system has gone awry. What Senate reform is seeking to do is to ensure, and you cannot ensure it, but is seeking to try to put in place a mechanism in this country where people's interests are represented in Ottawa, rather than Ottawa being represented to them in their constituency.

Mr Epp: I just want to make one other comment.

The Chair: Hurry, please, because we are running out of time.

Mr Epp: I have always been very brief, Mr Chairman.

Mr Polsinelli: I have been short.

Mr Epp: And my colleague has been short.

Seriously, what we are talking about here is that members have a greater responsibility than just to represent their particular riding. Sometimes that responsibility is to carry a message which has been arrived at by a greater body of people—for instance, a caucus—and so forth. It may not always be in the best interests of your riding to decide on a particular issue. I am sure I have done that.

I have got to think in terms of my riding, I have got to think in terms of Ontario, but even more so, I have got to think in terms of Canada. That sometimes means taking a message back to my own riding and saying, "Look, I don't agree with you people and that's what I have been elected for, to represent a greater body of opinion on this and sometimes go against the wishes of my constituents." I do not try to do that deliberately, but I feel I have been elected to make the best decision that I can, and that may be not in the best interests of all the people in my riding at that particular moment in time.

Dr Elton: I agree wholeheartedly with you. It is a question of balance, and we could go through the models of representation, the problems and so on. My point is that our system, because of party discipline, because of the geographic nature of this country—I mean, when you come from northern Sas-

katchewan and you end up in Ottawa and you live in Ottawa for 10 or 15 years but you still "represent" the people from your constituency, it is a very distended kind of representation. The representation function has got out of balance. Senate reform seeks to put some balance back into that representation function. I would be the last one to argue that any elected representative should slavishly represent the view of his constituents only, and all the time. I believe that is a false representation mode. It is an important one, but there are other factors to consider. What I am saying is that in our political system—over the last three or four decades in particular, but it has been there throughout this century—because of the geographic nature of this country, because of the nature of the parliamentary system, because we have not had a triple E Senate in place, this representation model has been skewed.

I fully believe that members of Parliament will change their behaviour dramatically within a decade of an elected Senate coming into being, and I think they will function in a much more balanced way as regional representatives, because they will have to. There will be a check on them, because there will be another body that, if they do not perform well, will outperform them. So there will be that kind of competition for a balanced representational model, and I think Canada will be better off as a result.

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Miss Roberts: I will be very brief because I think you have put forward your position very well, and I want you to know that in Ontario there are many people as well who believe the Senate perhaps is not in the appropriate shape that it should be.

I would like to focus on one thing that you said, and that is that the triple E Senate is not really about Senate reform but is about restructuring the political institution. I think you have limited yourself by going with the triple E Senate and I think we are not focusing on the appropriate thing for the people of Canada by saying a triple E Senate, because that is not what you are doing. You are restructuring completely the political institutions of this country. We must make that clear to everyone, and you have made it very clear. This is the first time, I believe, that I have heard it put forward so succinctly, and I think that we must get away from saying Senate reform; we must go on to what is important.

We have talked about Senate reform for 100 years. We have to stop doing that. We have to start talking about the restructuring of the political institutions of our country. I think if we did that, we would not be misleading the public of Canada, in the sense that, "This is just Senate reform," because it is not just Senate reform. You have made it very clear today that it is a complete reform of our federation, Confederation, and various parts of the institutions that we have been aware of over the last 120-some.

I think it is important that your message be gotten out to the people in Ontario and Quebec, that this is what your intention is and not just a simple Senate reform. I think it is important that we do that. The reflection of our country with Meech Lake is a country that existed maybe 10 or 15 years ago. The reflection of the 1982 bill was a country maybe that was in existence 20 years ago. We must move ahead with the restructuring.

I want to thank you for coming today and giving us your point of view as to what that restructuring should be about, and I think that it is important that we move towards that in a logical step. I hope there are many other times that we will get together with people from the west, from the east and from all over Canada to discuss this important restructuring.

Dr Elton: Let me comment on that. My immediate response is that you are right, we are talking about restructuring the overall process. But you have to focus on why it is that we have centred on Senate reform, and that is because if you are going to eat an elephant, you do it one bite at a time. If you try to swallow it all at once, you not only will get indigestion, you will not swallow it at all.

Miss Roberts: Yes, but you have to tell people, "You're eating an elephant."

Dr Elton: That is clear if you look in this documentation.

Miss Roberts: But it is not clear out in the public.

Dr Elton: The point is that the House of Commons has had how many committees to reform its processes. It has a mechanism in place to reform its processes. There is debate going on all the time about how to change and modify the parliamentary system. There is a mechanism in place for that to take place. It does not require constitutional change; it requires behavioural change. It requires orders of the Legislature to be changed: the way in which the Speaker responds, the way in which we consider majority votes and confidence votes. The list goes on and on and on, whether we are talking about the House, the cabinet, the bureaucracy or what have you. The Senate, however, requires constitutional change. That is a big difference. All these other things will happen without constitutional change.

Now it is interesting that it is not absolutely necessary to effect dramatic Senate reform through constitutional change. I just finished writing an article that is going to be coming out, and some of you who are going to the leadership race in Calgary will find it in your package on Senate reform, making the argument that—we have never had it happen—should, for example, someone become Prime Minister and decide that he has a commitment, that he sees Canada beyond its traditional boundaries, he could effect Senate reform the likes of which we have never seen simply by declaring as Prime Minister, as mini-dictator, if you will, "From now on I will appoint no one to the Senate unless he's first nominated by election from the province that he is to represent."

Talk about Senate reform? You have got a major step forward. All of a sudden, you have the first E; no constitutional change required, thank you very much, just a committed, thoughtful, insightful, risk-taking Prime Minister. Some would say those are contradictory terms, but it is possible. But the kind of Senate reform we are talking about is not possible without constitutional change, and we think that is the best way to accomplish it, because in taking this first and important step the rest will start to fall into place. You will start to get more balance in the system, cabinet ministers will start to function in a little different manner, premiers will start to function in a little different manner, party caucuses will start to function in a slightly different manner and you will start to see the kind of change that will reflect the kind of Canada we really live in.

Mr Eves: I just have a very brief question. What do you think the prospect of Senate reform is if it is not tied in to the Meech Lake agreement or accord?

Dr Elton: We have been at it for 100 years. I think they are very remote and I think that is why you have seen—you saw Mr Getty's first attempt at it in 1987. He really believes that this is an essential and adequate first step; I do not share that view.

Mr Wells's and Mr Filmon's clear commitment is one that I share, that unless we get some movement now the likelihood is, because of the vested interests, because of what the Friedmans in a book some time ago referred to as "the tyranny of the status quo," which I believe is an even greater tyranny in many regards than the tyranny of the majority, nothing will happen. It will be shoved off, we will fumble through another decade of make-do ad hockism, we will end up spending a lot of our time fighting with one another about regional discrepancies and regional inequalities, which is completely, to my point of view, counterproductive, and so we will all be poorer off as a result a decade from now.

But my view on Meech is that unless there is something substantive, not committed to in the sense of, "Trust me," but committed to in the sense of it is there, it is now and if it is not today, it is three or five years from now—I am really delighted with the position that Mr Filmon has taken on a sunrise clause, because it seems to me that embodies all that is good in this whole idea of reforming the Senate. Make a commitment now. You do not have to touch the Ontario or the Quebec or the Alberta veto. Leave them with their vetos, but make a clear statement now, and put it in the Constitution, that if by the year—fill in the blank—1995, 1997, whatever, we have not agreed to something, then this is what happens.

I think it is a wonderful way to approach things. I can tell you it has certainly focused people's attention. They will get the job done, and I think that you would get that agreement among them between now and then because it would be in all of their best interests to see it done. But if something concrete does not happen on Senate reform now, it is not in everyone's best interest to see that it happens later.

The Chair: Thank you very much, Dr Elton. We certainly appreciated your comments and your frankness. I am sure that what has gone on today will be very useful to us as we deliberate over the next couple of months. Mr Brown and yourself are invited to join us. I believe it is across the hall, in room 113, and you can speak to members of the committee individually. I am sure they will have other questions for you. Again, we thank you both for attending this morning.

We will be instructing the clerk to set up a subcommittee meeting. The committee is now adjourned.

The committee adjourned at 1237.

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Ontario

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 965-2159.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL AND INTERGOVERNMENTAL AFFAIRS

Tuesday 12 June 1990

The committee met at 1546 in room 151.

CONSTITUTIONAL ACCORD

The Chair: Welcome to the select committee on constitutional and intergovernmental affairs. You will notice from the agenda that the first item is organization. Given that we did not expect Mr Scott until four o'clock, perhaps we could hold the organization part until after Dr Hogg has presented, and we can move right in to Mr Scott's presentation.

The committee, as you know, has been directed by the Legislature by motion, and I would like to read the motion into the record:

"Mr Scott moves that the select committee on constitutional and intergovernmental affairs be authorized to consider the 1990 constitutional agreement signed at Ottawa on 9 June 1990 (sessional paper number 400) and to report to the House no later than Wednesday, 20 June 1990; and that for the purpose of this motion, the committee be authorized to meet concurrently with the House and during any adjournment of the House, subject to the agreement of the House leader and the chief whip of each recognized party."

That motion was carried. The subcommittee met yesterday and directed that hearings would start this afternoon. The plan, as of right now, is that the committee will meet this afternoon and tomorrow morning, probably tomorrow afternoon and Thursday, at which time a further schedule will be released depending on the number of groups or individuals that wish to present to the committee.

Without any further delay, I would like to ask Mr Scott, the Attorney General, to give us brief opening remarks, and then perhaps we will have questions from members of the committee.

ATTORNEY GENERAL

Hon Mr Scott: I take it each member of the committee has before him or her a copy of the agreement which was executed by the first ministers on Saturday last.

The members of the committee, many of whom were members of our committee on Meech Lake, will be aware that when the Prime Minister convened a dinner a week ago Sunday to discuss accommodations around the Meech Lake accord, there were seven provinces that had already passed resolutions effecting the constitutional amendment—that is, the Meech Lake accord—one province that had passed such a resolution and subsequently repealed it and two provinces which had not taken steps to pass a resolution at all.

In that sense, there were three provinces that had not taken the requisite legislative steps as of that date to effect the Meech Lake accord by the deadline that is essentially fixed by the Constitution at three years following the first introduction and passage in the legislature or Parliament of the amendment, which in this case is, I believe, 23 June.

The intellectual tensions that existed—I am not talking about the emotional or political tensions—as the first ministers went into that meeting included the fact that each of the three provinces that had not yet enacted a resolution in support of the Meech Lake accord had not done so either because they felt that the accord itself was inadequate in one or more particulars; or because they believed that the accord should be accompanied by a constitutional amendment dealing with other matters beyond the matters that were set out in the accord itself; or because they believed that a non-constitutional agreement or agenda respecting the future constitutional initiatives of the governments should be undertaken, or should at least be in some fashion under way, before 23 June.

The intellectual tension created by proposals like that on the side of the three provinces that had not acted had led to responses by the seven subscribing provinces with respect to each of those issues. The catalogue of issues that had to be addressed in one format or another as far as the three provinces were concerned has been set out really in a number of places.

The Ontario Legislature's own committee on the Meech Lake accord, in so far as it intended to establish an agenda for the future, was on balance probably as complete a catalogue of outstanding potential issues to be addressed around Meech Lake or following Meech Lake as was the House of Commons committee report that was made available some two or three weeks before the Prime Minister convened his meeting. It was in that intellectual environment that the meeting began a week ago last Sunday.

The agreement that you have before you was arrived at as a matter of principle on the Friday evening following the Sunday dinner and was executed in the detailed form before you late the following day, Saturday. I thought it might be useful to take you through it. It is very dangerous to try to summarize a document that exhibits the complexities and the attention to appropriate detail that this one does. You might say, "Why don't we read the whole thing together?" but I will not bore you with that exercise, on the assumption that you will have read it. I will simply attempt to show you how it is organized and the main points that it attempts to address, reminding you always that anything I say should be measured against the precise text that the first ministers have used.

First of all, the agreement is signed by all the ministers, but you will see on the signing page that two of the ministers have attached asterisks to their signatures. Manitoba's signature is dependent on a public hearing process that is already under way in that province, and the Premier of Newfoundland's signature is subject to his endorsement of paragraph 1, to which I will come, and his further endorsement of the balance of the agreement only if it is given legislative or public approval following consultation.

A number of provinces, and certainly Ontario, although not bound to do so by any provision of the agreement, have undertaken to conduct public hearings. That of course is why you are here, because that undertaking of the Premier, made very shortly following the signing, was adopted by resolution of the House yesterday.

The agreement is divided into six numbered paragraphs. It is recognized that together they comprise the accord of last week, and while they are set up in numbered paragraphs for purposes of convenience, it should be recognized that the agreement must be viewed as a whole. It will not, in all probability,

be possible to act on part of it but not on other parts. It is a negotiated document among the 11 governments and therefore should be read, in so far as possible, as a whole.

Numbered paragraph 1 is the undertaking of, "The premiers of New Brunswick, Manitoba and Newfoundland...to submit the Constitution Amendment, 1987"—the Meech Lake accord—"for appropriate legislative or public consideration and to use every possible effort to achieve decision prior to June 23, 1990." The key word there, in light of the condition attached by the premiers of Manitoba and Newfoundland, is "decision." They are obliged to apply their best effort to achieve decision before the fixed date.

Paragraph 2 relates to Senate reform. Honourable members will be aware that two of the three provinces, Manitoba and Newfoundland, in the discussions that have taken place over the last three years about the impact of the Meech Lake accord and the constitutional development of the country, had put Senate reform very high on their list of conditions. That had been done as well by the Meech Lake accord itself, which, you will recall, listed Senate reform as the first priority following the adoption of Meech Lake. That reflects in the Meech Lake accord the concern of all the first ministers, but it is no secret that some of the western provinces, particularly Saskatchewan, Alberta and British Columbia, give a major priority to the question of Senate reform as a response to some of the governmental problems that they believe they confront in a federal system. So paragraph 2 deals with Senate reform.

The first thing it does is establish a new process to deal with Senate reform as a constitutional issue. In light of the concerns that you may have developed and that members of the public have developed about the way the Meech Lake accord process occurred, you will be interested in what is proposed for Senate reform because it is an attempt to get away from the Meech Lake process, which, after all, was our first effort at domestic constitutional reform. In 120 years we had never done this in Canada; it was always done in the United Kingdom, by the United Kingdom Parliament. Meech Lake was our first experience. We will all have drawn lessons from that experience, and the Senate reform proposal in paragraph 2 is an effort around an issue that is next on the constitutional agenda after Meech Lake, to establish a new kind of process.

What it does is say that, "The federal government and the provinces will constitute a commission with equal representation for each province and an appropriate number of territorial and federal representatives to conduct hearings and to report to Parliament and the legislative assemblies of the provinces and territories, prior to the first ministers' conference on the Senate to be held by the end of 1990 in British Columbia."

Now, stopping right there, there is the establishment of a committee in which there is equal provincial representation with territorial and federal representation to conduct hearings, to hear members of the public and experts and other groups on the subject of Senate reform, and to make a report to Parliament and each of the legislatures by a certain date.

The mandate of the commission has been fixed by the first ministers so that the commission's specific proposals should give effect to three objectives that the first ministers established as a starting point:

First, "The Senate should be elected."

Second, "The Senate should provide for more equitable representation of the less populous provinces and territories."

Third, "The Senate should have effective powers to ensure the interests of residents of the less populous provinces and territories figure more prominently in national decision-making, reflect Canadian duality and strengthen the government of Canada's capacity to govern on behalf of all citizens, while preserving the principle of the responsibility of the government to the House of Commons."

What is intended, very simply, therefore is the establishment of the commission, in the conduct of which every territory and province and the federal government will play a part, the conduct of hearings and a report. It is hoped, I believe, that in this new process we will, over the next six months or so, get significant input, educate the general public to the issues about which the commission is concerned and develop a fund of ideas coming before the commission, so that the commission itself can begin to make the kinds of compromises around Senate reform that it was not practically possible to make in respect of Meech Lake three years ago because of the process that was adopted there.

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We hope this will be a better process. And when people say they do not like the old process, I understand what they say. They do not often tell us what the new process should be. This, at least, is a start at developing a new process. Then, when their report is received, the Prime Minister and premiers will meet and will seek to adopt an amendment on comprehensive Senate reform by 1 July 1995. So there will be a five-year period, and it is hoped that at the end of that period a comprehensive Senate reform program will be developed.

On the top of page 2 you will see that the ministers have undertaken "that Senate reform will be the key constitutional priority until comprehensive reform is achieved." It was said in the last three years that the round of constitutional arrangements we were in, leading up to this week, was the Quebec round. The paragraph at the top of page 2 seems to contemplate that the process referred to in that paragraph will represent the Senate reform round.

Then the second paragraph on page 2 provides that if by 1 July 1995 comprehensive Senate reform has not been achieved in the manner that was set out before, there will be a change in the representation of some of the provinces in the Senate of Canada. Essentially, what that involves is the surrender by Ontario of six of its vacancies, the surrender by Nova Scotia of two of its and a similar surrender by New Brunswick, so that those Senate seats—without enlarging the Senate—can be assigned to the four western provinces and Newfoundland.

Honourable members will perhaps agree that the arrangements for the Senate that presently exist—in which Ontario has 24 senators, with a population of nine million; and British Columbia, with a population of nearly four million, has six—are inequitable. It is inequitable on a representation-by-population basis and it is particularly inequitable if the Senate is seen as an institution that is to take account of the needs of the less populous regions of the country. I think that takes care of Senate reform for the moment.

Paragraph 3 is a package of other constitutional amendments.

The first is a provision respecting sex equality rights which will require that section 28 of the Canadian Charter of Rights is added into section 16 of the Constitution Amendment, 1987.

The second provides a role for—and that is in the resolution before you, of course—the two territories in appointments to

the Senate and to the Supreme Court of Canada, which comes from the Ontario select committee report, I believe.

The third deals with language issues, in the sense that it is required that matters that are of interest to English-speaking and French-speaking linguistic minorities should be added to the agenda of constitutional conferences.

The fourth is the constitutional provision for a first ministers' constitutional conference to be held once every three years, the first within a year from proclamation, to deal with matters of interest to the aboriginal peoples of Canada. That takes care of the third numbered paragraph of the package.

Paragraph 4 provides an "Agenda for Future Constitutional Discussions," and there are three paragraphs here that are of significance.

The first provides that all 11 first ministers agreed that a future constitutional conference should address available options for provincehood for the territories that are now included in Yukon and the Northwest Territories, and specifically should consider the possibility that only a resolution of the House of Commons and the Senate be required. That possibility has been explicitly requested to be considered by the territories, and the first ministers have agreed that this issue, the issue of how new provinces are made and particularly whether we should revert to the pre-1982 formula for the creation of provinces, will be on an agenda of a future constitutional conference.

The second paragraph in paragraph 4 is headed "Constitutional Recognitions." In this paragraph the first ministers agreed that it was appropriate to turn to the development for our Constitution of what has in short form been called a "Canada clause," or a clause which attempts to recognize the characteristics of Canadian society beyond the existence of the "distinct society" that is the province of Quebec. Members who were on our own select committee will remember that this proposal was very central to the proposal that the Ontario legislative committee made as part of its post-Meech Lake agenda. So it is intended that this should be done.

It is important to observe that for the 123 years of our Confederation, we have tried to do that without success on a number of occasions, but the first ministers are anxious to try again and they intend—again, they are trying to strike a new process—that public hearings would begin with respect to this issue in Canada on 16 July 1990 and a report on what the clause would look like and as important, where it would be placed, whether in the preamble or in the substance of the Constitution, would be prepared for consideration by first ministers at their conference in 1990.

So while the Senate reform proposal contemplates a proposal being made some time before 1995, the constitutional recognitions proposal or agreement contemplates a proposal being received by the first ministers at their conference in 1990.

The third paragraph under "Agenda for Future Constitutional Discussions" contemplates that the entire process of amending the Constitution, including the three-year time limit under subsection 39(2) in which we are now involved, and the question of mandatory public hearings that might be required in an amending process, should be reviewed.

The constitutional conference that is required by section 49 is, I am advised, a constitutional conference in 1997.

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The next paragraph contemplates a second kind of constitutional review, and that is a constitutional review that is already mandated by section 50 of the Constitution Act and which will take place in 10 years. The ministers have agreed to continue to commit themselves to reviewing the operation of the Constitution at that time, including the operation of the Canadian Charter of Rights and Freedoms, with a view to having an ongoing process leading to that conference, so that if there are appropriate constitutional amendments to be made they can, by that process, be made.

Section 5 is on page 4, and in that the premiers and the Prime Minister take note of the discussion that has taken place in various committees, in various political arenas and generally in the public about the interaction between the "distinct society" clause and the provisions of the Charter of Rights and Freedoms.

The Prime Minister asked a group of constitutional lawyers to prepare for him an opinion about the validity of those concerns. That opinion was received by the Prime Minister and it is noted and attached to the communiqué. The opinion will be found three pages down in a letter headed, "Dear Prime Minister," dated 9 June 1990, and you will see that it is signed by six—I was going to say six academics but that would not be right—four academics, a public servant and a barrister and solicitor in the private sector.

Without attempting to summarize what is a closely set out opinion, in my respectful view that opinion describes the way the Canadian Charter of Rights and Freedoms will be interpreted in light of the "distinct society" clause, and makes plain in the last sentence, which is worth reading, that "nothing in that clause creates new legislative authority for Parliament or any of the provincial legislatures, or derogates from any of their legislative authority," confirming, if I may say so, the submissions that were made by my ministry to the select committee of this Legislature some years ago. That is paragraph 5.

Paragraph 6 is found on page 5 and is headed "New Brunswick Amendment." This is in effect a bilateral amendment and provides that a clause will be added that "within New Brunswick, the English linguistic community and the French linguistic community have equality of status and equal rights and privileges," and that the same amendment will "affirm an additional role of the Legislature and government of New Brunswick: to preserve and promote the equality of status and equal rights and privileges of the province's two official linguistic communities."

The last paragraph provides how that amendment will be achieved.

Then there is the signing page with the notations that I have recorded.

Mr Chairman, I think that, at some length, is an introduction to the document and I would be delighted to respond to any particular questions that you or members of the committee may have.

Mr Polsinelli: Mr Scott, notwithstanding the general dissatisfaction with the process of constitutional reform in this country, it is my opinion that all Canadians should be proud, and not least, relieved, that an agreement has been reached, and particularly proud, I think, of the leadership role played by our Premier in achieving this consensus.

Now I think it is up to us to try to understand what they signed. In that regard I have two questions to ask you. One deals with the process and the whole concept of Senate reform. We know that the four western provinces to date have advocated a triple E Senate: one that is elected, effective and equal. The second objective that this new commission is given is one of providing a Senate that has more equitable representation. Would it be fair to say that the western premiers have compromised on their third E, that of being equal, to something a

little bit less than equal, to an equitable representation in the new Senate?

Hon Mr Scott: Everybody compromised. If you follow the francophone press in Montreal and Quebec City and if you listened to Mr Parizeau, you will see that he asserts that the objective that the Senate should be elected represents—I cannot confirm that it does or not—an unforgivable compromise made by Mr Bourassa. So there is compromise with respect to "elected."

The second paragraph in effect creates a floor. Our minimum objective is to provide a more equitable Senate. It is still open to the commission to recommend an equal Senate if it thinks it appropriate to do so. They must recommend one that is more equitable. They may determine what "more equitable" means in terms of the continuum towards "equal."

Mr Polsinelli: I have two more brief questions. One deals with the concept of an elected Senate. Do you know if the first ministers gave any discussion in terms of what type of an election? Was it an election by constituency or was it perhaps a House of the Provinces as has been advocated in the past.

Hon Mr Scott: I am not aware whether or not that question was discussed. It is hard to imagine anything that was not discussed in the week, but I have no evidence this was discussed. It was obviously left to the commission to make a recommendation on that subject.

In the meantime, of course, the process established by Meech Lake for the appointment of senators will continue to occur; that is, provinces will submit lists of names to the Prime Minister.

Mr Polsinelli: Lastly, as you are aware, part of the concerns the multicultural communities had with the Meech Lake accord was that in recognizing the fundamental characteristics of Canada, the Meech Lake accord does not recognize that a fundamental characteristic of Canada today is its multicultural nature. In dealing with Senate reform, one of the objectives the commission is going to have is that the reformed Senate "reflect Canadian duality." When they talks about Canadian duality, what are they referring to?

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Hon Mr Scott: First of all, let me say that the concerns about other elements of distinctive Canadian life and the failure of Meech Lake, which was not intended to address that question, to in fact address it—it was after all the Quebec round, or that is the way it started out—were exhibited not only by the multicultural community but by women's interest groups, the aboriginal community and a number of other communities that think they are able to identify characteristics of Canadian society that should be incorporated in some kind of Canada clause. There was some significant concern on a number of fronts that this should be done.

I think it was recognized that the Senate would not necessarily be the forum—would not displace the need for a Canada clause; let me put it that way. What it is hoped the commission will do is to present a plan for a Senate that will be an important institution, so that the country can govern itself on behalf of all its citizens and reflect at the same time the interests of the less populous provinces and the duality—which I think in this context means the anglophone-francophone duality—of the country.

As you will know, Mr Polsinelli, that duality is already found in our Constitution by virtue of the fact that the present Constitution establishes the maximum number of senators—the number that must come from the province of Quebec.

Mr Eves: Mr Scott, I have two points I would like to touch on. Are we correct in assuming that as part and parcel of this deal we must complete the public hearing process on the 1990 Constitutional agreement, or companion resolution section, if you will, of the agreement that was reached by the first ministers last week, by next week?

Hon Mr Scott: I think it is very important that if at all possible we should do so. Western Canada, particularly, is looking to us to play our role in this exercise. The province of Manitoba which has been deeply riven by disputes about the Constitution, the province of New Brunswick which has been very concerned about the constitutional provisions and the province of Newfoundland which is confronting some difficult choices, will, I think, be heartened by the fact that the province of Ontario is prepared to undertake and achieve passage of these changes that are perceived as being very important in those places—they are important here too, but they are perceived as being important in those places—by 23 June.

Mr Eves: Are we correct in assuming that if all the other provinces do not pass this package by 23 June, we will have no agreement?

Hon Mr Scott: I do not think you can say that. You would need a constitutional lawyer to tell you that. I am now a politician. It is my view that a number of provinces have subscribed to the accord and agreed under paragraph 1 to pass the Meech Lake accord because they are satisfied that the other provinces will make the adjustments that will make them more comfortable. Remember, Premier McKenna made that very plain, that he wanted to be satisfied that the kinds of changes he thought were necessary would be made. Premier Filmon and Mr Doer and Mrs Carstairs had the same concern. They expressed it in terms of certainty, "What certainty is there going to be that you will do the things you say you will do?"

I think it is very important on Ontario's part, as the senior province in the country, that we should take this leadership role and get it done. Then we will be able to begin the substantial work, which is the work of Senate reform and the Canada clause, the aboriginal round and so on.

Mr Eves: Is it your anticipation that all provinces will do likewise?

Hon Mr Scott: I cannot say that.

Mr Eves: The other point I want to touch on is I would like to ask the Attorney General his opinion about what the legal effect is, if any, of the legal opinion which has been appended to the agreement with respect to the "distinct society" clause.

Hon Mr Scott: I think the legal effect of the opinion is that it will provide comfort to those who find comfort in it. It provides no comfort to me because it represents what has always been my view, so I did not need it to be comfortable.

Mr Eves: But others obviously felt they did.

Hon Mr Scott: Yes, and they got it.

Mr Eves: Would it be fair to say that all premiers agree with that legal opinion?

Hon Mr Scott: I cannot really answer that question. I do not know what all the premiers think in their heart of hearts. I only know what they tell me. None of them, for what it is worth, have told me that they do not agree with it, or nobody has said to me following receipt of it that he does not agree with this view. Before receipt of it there may have been some who were taking another view.

Mr Eves: If all provinces or all first ministers agree with the legal opinion that is appended with respect to the effect of the "distinct society" clause, I guess the next question that a lot of people would ask would be one that Premier Wells and others asked: Why would we not make that blatantly clear in the "distinct society" clause itself?

Hon Mr Scott: Because in the view of the ministers it was not necessary.

Mr Eves: In view of all ministers it was not necessary?

Hon Mr Scott: If there was a first minister who thought it was necessary to amend the "distinct society" clause to make clear what it said, that first minister, it seems to me, had the choice of either obtaining the concurrence of his colleagues to that amendment or refusing to sign the agreement on account of its absence. In that sense there were just two choices, were there not?

Subject to the reservation about the effect of their signing that is summarized by the asterisks on the signing pages, no Premier refused to sign. So your question is going to be answered not by asking me questions but by writing to the various premiers and getting an account from them.

Mr Eves: I thought you were party to some of these discussions.

Hon Mr Scott: Yes, but I did not go around cross-examining them.

Mr Allen: I want to pursue a little further with the Attorney General the question of the mandate and timetable of these hearings. Some sections of this statement—for example, section 3 does have as a final paragraph that "The Premiers will lay or cause to be laid before their legislative assemblies," etc. I do not see any such language around item 2 on Senate reform, nor any preamble material that says anything about timetabling of legislative response.

You indicated to us a few moments ago that it is certainly within the terms of the understanding that the premiers have that they would go back and do this as quickly as possible and that in the case of Ontario it would be expeditious for the whole process for us to do it virtually immediately. I can certainly see a certain logic in that, given the larger scenario of Meech Lake and the stuff that happened last week.

At the same time, yesterday when my leader questioned the Premier, he seemed to view this with a considerable amount of latitude and said that no, it was not necessary even before 23 June. I had a conversation with you in which you said it would be wise to do it before the 23rd and I have heard that somebody else had a conversation with you in which you said it was virtually necessary.

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Hon Mr Scott: I agree it would be wise to do it and it is always necessary to do what is wise. Let me put it this way: If you look at the Senate reform clause, it establishes a commission which may not be perceived to be very contentious. The default provision is more contentious. Why is that contentious? That is contentious because the province of Manitoba particularly has not yet passed the Meech Lake accord.

The Premier of that province, supported by both opposition leaders, has expressed some serious concerns which I take seriously. They are advanced by them in good faith and in an important way. One of those concerns revolves around Senate reform. When Premier Filmon, speaking for his opposition colleagues as well, said, "What we want before we act is certainty," what they were really saying is, "Give us not just a piece of paper promise but some kind of pledge that you'll be as good as your word."

Really, when Ontario, Nova Scotia and New Brunswick offered as a default in Senate reform to readjust the Senate proportions, that was the kind of pledge that Mr Filmon in the west and Mr Wells in the east were looking for. It seems to me that in that context, if I were in Manitoba or in Newfoundland, I would regard it as very important for Ontario, New Brunswick and Nova Scotia to act before 23 June. The others do not matter so much because they are not making a commitment under the Senate reform of the same type.

But you can imagine if we failed to act and then changed our mind after Manitoba had endorsed Meech Lake, a lot of Manitobans would say: "You offered us the Senate seats. You didn't move. You got our concurrence to Meech Lake, then you changed your mind and took away the Senate seats." I guess somebody might say tit for tat, but nobody would. So it is in that sense that I think it is morally necessary to act.

Mr Allen: Do we know whether, for instance, Nova Scotia will be acting before the 23rd on this particular provision?

Hon Mr Scott: I cannot tell you that. I believe the Premier of Nova Scotia indicated that he would at the televised hearing on the last day and Mr McKenna, of course, made plain that he would and indeed he has to act because he has to approve Meech Lake itself.

Mr Allen: As you indicated, the fallback provision is fairly drastic, but at the same time also the presumption which was conceded in the three terms that you have outlined for us and which is in the document with regard to how Senate reform will now proceed are also very substantial concessions. We have, in our hearings here in Ontario, heard, for example, that the moment you concede election you have conceded a legitimacy to the body which makes it very difficult to constrain effectiveness.

Hon Mr Scott: But there will be no elections before 1995.

Mr Allen: But that surely is not the question. If the reform is to proceed on the assumption of election as a primary condition of whatever point we arrive at down the road, then that term of the whole debate has been, in effect, given—

Hon Mr Scott: I do not accept that for a moment.

Mr Allen: Then will you explain, please, what the force is of those particular items?

Hon Mr Scott: The observation you make is about the seriousness of our default commitment, the reallocation of seats. You say that is a serious concession and of course it is, but I just do not want you to exaggerate the seriousness. If 1995 comes and there is no Senate reform, there will be no elected senators in the Senate, with the one exception of Mr Waters, and the Senate will have no more credibility than it has now, an unelected body with lifetime members.

If you believe the Senate of Canada has high credibility now, you will be satisfied that the 1995 unreformed Senate will have high credibility. But I do not believe it has that kind of credibility and if it is not reformed, it will not. Therefore, the sacrifice of senators by the three provinces at that stage, in a body without credibility, is not a major concession.

If there was never going to be any Senate reform at all in Canada and the three provinces gave away their senators in the ways described, I do not think anybody would care. I think Mr Rae's quip about giving away some opportunities for the advancement of party faithful is entirely right. It has and will have no credibility if it is not reformed. If, on the other hand, it is reformed before 1995, we do not give away anything. We simply take our place in the reformed Senate, whatever shape that reformed Senate takes.

Mr Allen: In response to that, surely since it has been possible to engage in the election of a senator already under the existing Meech Lake accord provisions, and that has now been legitimated, and notwithstanding the fact that there is no reference to election in the fallback provisions, the Prime Minister has certainly enunciated his belief that the future Senate will be an elected body regardless of how that is arrived at or whether there are any terms attached to that Senate.

In other words, we will have lifetime elected senators rather than appointed lifetime senators, at the very least in five years' time when they embark on the post-five-year-restraint period that the Prime Minister and the premiers have—

Hon Mr Scott: The first point to observe is that—

Mr Allen: It is not unimaginable that—

Hon Mr Scott: I do not agree with you. I do not think it is even imaginable. The reality is that before reform takes place, senators will be appointed under the Meech Lake arrangement; that is to say, lists of nominees will be submitted to the Prime Minister. You will recall that was precisely what led to Mr Waters's appointment. His name and four others were submitted by the Premier of Alberta to the Prime Minister.

Now your assumption is that between now and the end of 1995 the Prime Minister will continue to appoint mostly or only persons who have submitted to an election as required by the Premier of the province in order to get on the list that the Premier of the province is going to send to the Prime Minister. None of that impedes the Prime Minister of Canada from picking the third person on the list or the fourth person on the list.

You will understand that the Prime Minister, it seems to me, if he is the hard bargainer that everybody says he is, is not going to encourage election while Senate reform is pending, because election is one of the things that he may want to give in order to get concessions on effective or equal. So I do not envisage the kind of scenario that you suggest at all occurring.

Mr Allen: I think it is important to follow through to the second half of the question, which was with respect to the terms and the status of the terms. The Senate shall be elected, there shall be equitable representation and then, finally, effective powers to ensure that the interests of the residents of the less populous provinces and territories, etc, figure more largely in the federal domain.

Hon Mr Scott: But it does not—

Mr Allen: Mr Chairman, if I might just complete my question, it seems at least in these terms—and I would be prepared to discuss informally the previous question further with the Attorney General—there is now a major concession that if reform of the Senate goes ahead, the fundamental premise will be that this will be an elected body, perhaps not equal but, yes, equitable—

Hon Mr Scott: I agree with that.

Mr Allen: —perhaps not effective in some terms but effective in others. We have certainly heard time and again in this committee in the representations that have been made to us that the moment you do in fact create an effective and elected body, it is very difficult indeed to constrain its powers in such a way as to limit its effectiveness over time.

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What I just simply wonder, and I would like a response from you about, is whether it was necessary to make this particular concession in advance of the commission. Why was that force necessary to persuade the dissident provinces to meet the terms of Quebec?

Hon Mr Scott: First of all, I do not think anybody—I should not say nobody, but I have not met anybody lately who continues to favour an appointed Senate. I have met lots of people who think there should be no Senate at all. Indeed, at one period of time, that view had a certain attractiveness to me. I understand the view of those people and I understand the view of the people who think they should be elected. But I have not met lately anybody who thinks they should continue to be appointed.

Mr Allen: You should join our hearings. There have been some, and not undistinguished persons.

Hon Mr Scott: Are they senators?

Mr Allen: I will not plead the case and I am not going to.

Hon Mr Scott: No, but simply in response to your question, you seem to think that because the mandate of the committee is that the Senate should be elected in the first part of three parts, that is giving something away. The commission is asked to look at a Senate with these three general characteristics, including elected—

Mr Allen: Not necessarily to bring back?

Hon Mr Scott: Yes, and to bring back a report. If we do not like what they report, each province has a veto with respect to it. If the commission reports that it be elected but that it be equal from each province and that it have powers over financial matters, we can veto it. The commission will present a package and each of the governments under the Constitution will have a veto. So if we do not like what they bring back, we have preserved our veto.

Mr Allen: I would just observe, Mr Chairman, before—

The Chair: Mr Allen, I am sorry—

Mr Allen: —passing it back to you, that it does say—

The Chair: Order, please.

Mr Allen: —that the commission will bring back specific proposals on Senate reform that will—

The Chair: Mr Allen, we have already run out of time.

Hon Mr Scott: And if we do not like them, we will be—

The Chair: Attorney General, please. Order. We have already run out of time and we had other members on the list. I have given you some leeway, Mr Allen, and your colleague Mr Wildman may be upset with you. Mr Epp.

Mr Epp: Attorney General, speaking further on that particular point, do you want to elaborate somewhat on how that commission is going to be chosen and whether they are going to be elected people or appointed people? How many from each province? How many federally? Have you got some idea what might transpire?

Hon Mr Scott: That is not addressed in any particularity, and I think the government and the Legislature in Ontario would be interested in any views you may have with respect to that. All that is required is that the commission be established, that the provinces have equal representation and that the territories and the federal government be appropriately represented. I do not think any decisions have been taken with respect to the persons who would be on the commission or how many there would be from each province.

I think what is intended, by and large, is that the commission should not be a commission of experts but should be a commission that has interest in the subject matter and has sufficient experience and knowledge to be able to not only conduct the hearings but also design a second chamber within these three objectives that will be workable. I would think people of political background or political science background, etc, would make a very useful contribution to the commission.

Mr Epp: Is it going to be co-chaired or is there going to be a single chairman? Is there going to be one from the provinces and one from the federal House and the territories?

Hon Mr Scott: The section does not provide that. As you know, the chairman's job is the worst, so I think they would probably draw straws and the short straw gets to be chairman. The chairman never gets to ask any questions or talk or do anything.

I anticipate that the commission would probably function by selecting its own chairman. It might be that if there are various provinces competing for the role of chairman, because the Senate is likely to have some role that is designed to advance local interests, the federal government would be an appropriate chairman. The memorandum of agreement does not speak to that question.

Mr Epp: I notice it is not in there, but I thought your further discussions with the federal members may have given you more information on that.

The Chair: Mr Wildman, one final brief question.

Mr Wildman: I had so many.

The Chair: I know, but your colleague took up most of the time.

Mr Wildman: In that regard then, am I correct in understanding that of the other provinces of this country that have ratified the Meech Lake accord, other than Newfoundland, which has withdrawn its ratification, probably at least the majority of them will not be going through the process that we are engaged in now, because they have already ratified the accord? In particular, the National Assembly of the province of Quebec will not be involved in this kind of a process because, from the point of view of the legislators in Quebec, the Meech Lake accord of 1987 must be ratified by 23 June before other constitutional issues might be addressed.

If that is correct, can you explain, beyond what you have said, why it is that this committee, in your view, must, or at least should, ratify the proposed changes to Senate representation and the setting up of a commission to study Senate reform over the next five years prior to the middle of next week when that issue and that proposal have not been subject to any widespread debate or discussion by the people of this province?

Hon Mr Scott: There would be no particular utility or necessity for provinces other than Nova Scotia, New Brunswick or Ontario, perhaps, to act before 23 June, because under the Senate reform provision they are not giving anything. But the reality is that in Newfoundland and Manitoba, on the Senate reform question, which is a very lively question, both those provinces said, "We want some assurance about what is going to happen." They did not put it quite this way, but there was a reluctance to take paper promises.

Mr Wildman: They wanted certainty.

Hon Mr Scott: The key promise in the Senate reform is the promise made by Ontario, Nova Scotia and New Brunswick. The inducement to Senate reform is the promise that if we fail, there will be a reapportionment in which those three provinces will reapportion. I say that the moral necessity of doing this is to show the people of Newfoundland and the people of Manitoba that they have the kind of certainty they wanted by our acting. I believe that the legislatures of New Brunswick and Nova Scotia will be acting as well.

When people are meeting in Winnipeg talking about this, they will say to Premier Filmon, Mr Doer and Mrs Carstairs: "You went down there and all you got out of it was a promise about Senate reform and a promise of reapportionment. Ontario has promised to do it, but nothing has happened. They haven't done it. They haven't passed the thing."

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It would be no answer to say, "Well, they may doublecross us later." You know, governments do change. That is why we are in the kind of pickle we are in right now, is it not? Governments change and new governments do not always agree with what old governments do, so I think there is a moral imperative to do it to show the people, particularly of Manitoba and Newfoundland who are addressing the Meech Lake question this week, that we are prepared to be as good as our word.

Mr Wildman: Just on a point of order: As a new member of the committee I do not intend to try in any way to be obstreperous, but I will say that from my point of view, and I will be addressing this later when we deal with the agenda of this committee, the time frame set forward by the resolution passed in the House is inadequate to deal properly with a fundamental law of the country that should involve comprehensive discussion of people of this province.

The Chair: That is not a point of order, but we can discuss that later. Thank you very much, Attorney General, for coming and guiding us through the communiqué and offering your explanation and views. We appreciate it very much.

PETER HOGG

The Chair: The next presenter will be Professor Peter Hogg from Osgoode Hall Law School. Before Professor Hogg begins, I would like to indicate to the committee that we will call the committee to order at 5:45 so that we can deal with the

organizational matters which are very important and set up the schedule for the next couple of days.

Professor Hogg, welcome again to the committee and thank you for taking some time out of your schedule, on very short notice, to appear here today. We understand that you were involved as one of the representatives of Ontario. We would like you, first, to give us your view of the communiqué and then perhaps leave some time for questions.

Dr Hogg: It is very nice to be invited back. I will just very briefly go through the communiqué because I know the Attorney General has already done that for you and I will try and leave plenty of time for questions.

I think one of the important things to notice about the communiqué is how very close it is, in nearly all respects, to the recommendations of the Ontario select committee on constitutional and intergovernmental affairs. As I go through the recommendations—I went back and looked at that report this morning when I learned that you wanted me to appear tonight—I will notice the close correspondence between what was agreed to in Ottawa and what the Ontario select committee on Meech Lake recommended.

I am just going through the communiqué now. First of all, the Meech Lake accord will be passed unaltered; that, of course, was the recommendation of the Ontario select committee. With respect to Senate reform, which is the area of great concern to the western provinces and Newfoundland and was not a concern to the Ontario select committee, you know from the discussions with the Attorney General that what is set up is a public process for Senate reform that we hope avoids the deficiencies of the process that has just been completed.

It has what have come to be known as sunrise provisions; that is to say, the process is constrained from the start by certain principles: namely, that the Senate should be elected, that it should be more equitable and that it should be effective, although effectiveness is defined in rather careful terms.

As well as that, there is the so-called sunset provision, the provision which will readjust the Senate seats if, after five years, no reform has been accomplished. That default provision has sometimes been described as the poison pill because it is the remedy which the proponents of Senate reform hope will encourage the federal government, and Ontario particularly, to engage in the reform of the Senate.

The "distinct society" clause is really dealt with in three ways. As you know, Quebec took the position throughout the conference that it would not agree to alterations in the "distinct society" clause, and the Quebec position prevailed with some compromises. There are really three elements in the communiqué which bear on the "distinct society" clause.

The first is the proposal to put section 28 into clause 16, and you will recall that the effect of that is to make perfectly clear that sexual equality rights are not impaired in any way by the "distinct society" clause.

Second, there is the letter which is attached to the communiqué, of which I am one of the signatories, that reflects the constitutional view that I have been arguing for all along and that I presented to the select committee, which describes the very limited effect that, in my view, the "distinct society" clause will have.

The third element bearing on the "distinct society" clause is the commitment to a process which will lead to the ultimate adoption of a "Canada clause," because you will remember that one of the proposals for dealing with the "distinct society" clause, and essentially what the Ontario select committee recommended, was to have a more complete clause, either in the Constitution or in a preamble, which would set out a number of significant characteristics of Canada, not just Quebec as a distinct society. That is the third element of the communiqué which impacts on the "distinct society" clause.

The role of the territories: You will remember that the Ontario select committee recommended that the territories should be able to submit names for appointment to the Senate and should be able to submit names for appointment to the Supreme Court of Canada. That will be accomplished by this.

Language issues are another process matter which is put off to a second round.

Aboriginal issues: you will recall that the Ontario select committee suggested that a regular schedule of first ministers' meetings including aboriginal people should be established to deal with aboriginal rights. That is achieved by this agreement as well, except that this agreement calls for meetings every three years. The Ontario committee suggested five.

The other matter which is put off to the future is the question of the creation of new provinces in the territories. At the moment, after Meech Lake, that is going to require unanimous approval, and the territories are aggrieved by that process, which makes their achievement of provincehood more difficult. That has been put off to a further round.

The heading, "Constitutional Recognitions," on page 3, is of course the Canada clause which I mentioned as being a possible counterweight to the "distinct society" clause.

The third heading on page 3, "Constitutional Reviews," contemplates that in due course there will be a reconsideration of the process of constitutional amendment, and particularly with a view to shortening, if possible, the three-year time limit which has provided so much grief with respect to the Meech Lake accord. If that three-year time limit had been substantially shorter, I think the Meech Lake accord would have gone through more rapidly; it would have had to go through more rapidly. Obviously it would only be acceptable to shorten that time if the Constitution made provision for proper public participation in the process. So I think what is contemplated here is that first ministers ought to negotiate a process which would constitutionalize a requirement of public participation. If that were done, then perhaps the three-year time limit could be shortened.

1700

The only thing, I think, that was recommended in the Ontario report which is not covered in the communiqué—that is to say, the only thing that called for a constitutional change in the Ontario report that is not covered in the communiqué—is that the communiqué does not contemplate any clarification of the spending power clause, the new 106A. You will recall that the Ontario select committee suggested that it would be desirable to clarify the phrase "national objectives" in section 106A, which is one of the vague features of that clause. That has not been done.

Mr Chairman, I think that is all I need to say to open my testimony. I will be very happy to receive questions.

Mr Eves: We are pleased to have you with us this afternoon. Basically, I would like to ask you the same questions that I asked the Attorney General a few moments ago. In response to a question about whether it was necessary to complete the public hearing process and approve the 1990 constitutional amendment or companion resolution agreement by next week, he has given several answers to different members of the com-

mittee here today—that it would be wise, morally necessary—but he said he was not a constitutional expert, so we should ask one. So I guess I am asking one.

Dr Hogg: I will not disagree with the Attorney General as to what is wise or what is morally correct. The legal position is this. The constitutional amending formula by subsection 39(2) prescribes a three-year time limit for constitutional amendments. That time runs from the time the first legislative body ratifies. Therefore, the Meech Lake accord itself must be ratified by 23 June, because that is three years from when Quebec ratified it, and Quebec was first. The only legislatures that must act before 23 June are Newfoundland, New Brunswick and Manitoba, because otherwise the Meech Lake accord itself will expire and will have to then be repassed by all the legislative bodies.

With respect to these add-on amendments, which is all that Ontario has to do and all that the provinces other than those that I have named have to do and all that the federal Parliament has to do, they can be approved at any time within three years from the date when the first legislative body approves them. So you have more than three years, as a matter of law, to approve the add-on amendments.

Mr Eves: That does give us a definite answer with respect to that question. Turning to the opinion that yourself and five other constitutional experts signed with respect to the effect of the "distinct society" clause, I would like to ask you the same question that I asked the Attorney General; which is, what is the legal effect of that opinion's being appended to the agreement, other than giving comfort, as the Attorney General says?

Dr Hogg: Yes. Whether it will give comfort or not, I am not sure. I think the legal weight of it is probably this: that because it is mentioned in the communiqué and is therefore part of the process of adopting the Meech Lake accord, it would probably be looked at by a court if a question of interpretation of the "distinct society" clause arose. How much weight it would be given would depend on the court. My guess is that it would not be given a great deal of weight, but because I think it is correct, I think it will add—

Mr Eves: I hope so. You signed it.

Dr Hogg: —a little more fuel to an engine that is also being driven by normal principles of interpretation.

Ms Oddie Munro: The intention of Ontario to ratify the first ministers' agreement will not in any way prejudice or prejudge a continuing process which involves the Ontario citizenry, will it? We are talking about a process that is ongoing, and there are all sorts of concerns now which revolve around the fact that there has been a decision to bring something back to the Legislature. I do not think that precludes other kinds of opinion: bodies soliciting information from people in Ontario and the Office of the Premier receiving responses.

I am just wondering if you could tell me whether or not the Premier's call for ratification is advantageous to signalling to other provinces and to starting Ontario thinking of additional information it may bring forward. I do not personally see, as the other members of the committee do, the sort of crisis in not extending this committee's work in this instance. Indeed, we may be going on to other things after next week. I wonder if you could share your opinion of the time frame as you started to do with Mr Eves.

Dr Hogg: The legal position, I have stated to Mr Eves; I do not have any opinion on the question of whether you ought to act before 23 June or not. It seems to me, though, that each legislative body will have to make its own judgements as to the process that it should go through in ratifying this agreement and even with respect to something like the Senate, where this new commission has been established with equal representation from all of the provinces. I suppose that might turn out to be a useful model for other forms of constitutional discussions as well, but I do not think anyone assumed that it would preclude a particular legislative body from establishing its own process through a committee such as this one. So I think my impression was that it would be up to each legislative body to make its own decisions about the nature and degree of its consideration, both of this agreement and of the other aspects of the future constitutional discussions which are contemplated, even though there are some definite process rules for those future discussions.

Mr Wildman: Again, I welcome your presentation before the committee. I would like to follow up on two matters that were raised by other members. In looking at the letter, "Dear Prime Minister," which you signed along with other colleagues, am I correct in understanding that your answer is that in fact you agree that this opinion is just that and that it probably will not necessarily have much weight given to it by members of the bench if matters were brought before the court with regard to the meaning of this "distinct society" clause and how it affected the Charter of Rights?

Dr Hogg: Yes, I agree with that.

Mr Wildman: So an opinion is an opinion; it is useful and helpful, but it is indeed an opinion, and the opinion that counts is the opinion of the judges.

Dr Hogg: Absolutely.

Mr Wildman: Okay, I would like to move to the Senate representation and the proposal made to spur discussion of Senate reform. You have indicated that because of the legal requirements, the Ontario Legislature, as all legislatures, could take as much time as it wished, really, until one Legislature in the country had indeed ratified that proposal, and then it is three years subsequent.

Dr Hogg: Yes.

1710

Mr Wildman: So there could indeed be much time for all kinds of discussion and debate in this province—with regard to the desirability of the proposed changes to the Senate as it affects Ontario—among people in Ontario and the legislative committee.

Dr Hogg: Legally that is correct, yes.

Mr Wildman: Right. How would you respond to the suggestion that has been made by some in the last few days that the proposed changes—the fallback clause, in other words—in the representation in the Senate indeed become a minimum now?

Dr Hogg: I take the point that in the Senate round of constitutional discussions it is unlikely that the push for greater equality or greater equity would produce results that would restore 24 senators for Ontario. I do not know the answer to that. I see the point and I am not sure, but it is a plausible suggestion.

Mr Wildman: The suggestion made by the Attorney General was that politically that might be meaningless anyway, because he seemed to give the impression that, if not he, then many people in this country see the Senate as meaningless. I

have some sympathy with that point of view. But if the scenario were that there were discussions on the election of a Senate and then provision for powers to protect the less populous regions of the country within the Senate, indeed the smaller representation that Ontario might have as compared, let's say, to Quebec might indeed have some greater importance than it does today.

Dr Hogg: My feeling is that these default numbers probably do not have a great deal of significance in the sense that the push for a triple E Senate contemplates, of course, a Senate in which every province would have an equal number of representatives. Even at the moment, Ontario has 24 members, while a province like Alberta or British Columbia has only six. At the moment there is an enormous discrepancy between the numbers, so any movement in the direction of a triple E Senate has to involve the reduction of Ontario's representation and the increase in the representation of the western and Atlantic provinces.

Mr Wildman: What you have left out of that equation is Quebec.

Dr Hogg: Yes.

Mr Wildman: It is always dangerous when one speculates, particularly in these matters, but I would suspect that politically it is very unlikely that Quebec will ever concede that it should have less representation than it has now in a national body like the Senate.

Dr Hogg: Yes. It might be possible to justify a different treatment for Quebec on the basis of the principle that it is the primary homeland of French-speaking people in Canada, and the principle of duality might argue for treating Quebec differently than the other provinces. That will be left, I suppose, first to the commission and then to the negotiations that would undoubtedly follow the report of the commission.

Mr Wildman: That is why it is so interesting and dangerous to make commitments without prior discussion, because we might have arguments, for instance, from the Northwest Territories that it should have significant numbers in the Senate because it is the principal homeland of the Inuit.

Dr Hogg: I think in any reformed Senate very serious consideration would have to be given to appropriate ways of representing aboriginal peoples. It might take the form of permitting their representation to simply come through the territories, but it might take other forms as well, as I know your committee has been considering.

Mr Grandmaître: I would like to take you back to your legal opinion again, and I realize that a legal opinion is not final unless it is before the courts and a final judgement is agreed upon. I find it very strange—and I will use Mr Wells as an example, and maybe Mr Filmon—that for two years Mr Wells was going around his own province telling Canadians that he was very concerned about the "distinct society" clause and Senate reform—but mostly the "distinct society" clause. I find it very strange that for two years he was repeating the same story over and over again, and after seven days of consultation you convinced Mr Wells, as far as you and your colleagues are concerned, that no, the "distinct society" clause did not infringe on the Charter of Rights.

I am just wondering, and maybe you cannot answer this, how come Mr Wells did not consult his own team or group of constitutional experts. How come he did not do this in the last two years? Why did he wait until he got to Ottawa, got locked in and accepted your legal opinion as, not cold cash but very close to being cold cash? Is it because you are considered experts? How come he waited two years before getting such advice or such a legal opinion?

Dr Hogg: I do not know the answer to that, of course, but the drafting of this opinion actually started at a meeting that was quite widely attended by lawyers from, I think, all the various delegations. We had quite a long discussion—this was on the Wednesday afternoon—and at that point of the discussions it was not known what the outcome would be or what form the outcome would take. We did not know whether there would be an amendment to the Constitution or whether it would be signed by the first ministers or what.

I was there and so was the Attorney General—we were the people from Ontario—and I was struck by the very high level of agreement among the lawyers. Now, everyone did not come forward and say, "I agree," but the impression I got was that there was a high level of agreement, and that did include lawyers who were representing Newfoundland, Manitoba and New Brunswick—I think New Brunswick. Whether they carried the message back to Mr Wells or whether Mr Wells still has serious reservations about the point, I do not know, but no reservations have been expressed by any of the first ministers about the contents of the letter.

Mr Grandmaître: So Mr Wells went back home, and even with a legal opinion, he is still concerned about the "distinct society" clause. I do not know, maybe this committee will be able to convince them that there is nothing wrong with your legal opinion. But this is only a committee, it is not a court.

Did I hear you right, that even Mr Wells's own lawyers or team of lawyers agreed with your legal opinion?

Dr Hogg: They have not signed it, so I cannot say that for sure, but they were present at the meeting, not when this text was discussed but when the issue was generally discussed. As I said, there was a high level of agreement, although differing views were expressed.

1720

Mr Allen: I want to come back, first of all, to the Senate question. One of the Attorney General's principal points was that we were in fact moving into a new methodology around these matters, that we were going to move in the direction of constitutionalizing a public process around the consideration of amendments to the fundamental law of the land. Therefore, when one looks at the issue of the Senate, I guess one has to be concerned how much has already been battened down and sealed in advance of those public hearings and how much has not. I would like you to address the three items under section 2 of Senate reform—the Senate shall be elected, equitable and then effective—in terms of how far they do commit the process that we are going to enter upon through the commission to presenting only comprehensive proposals for the reform of the Senate, which necessarily must be based on those propositions and no others.

Dr Hogg: Clearly, any proposal coming out of the commission will have to be based on these three propositions. You say, "And no others." I think the better way to look at it, as the Attorney General said, is that these are the floor which represents the minimum requirements for a reformed Senate. The

actual recommendations may of course go to other issues as well and may even add to these. I would say that the commission will have to recommend an elected Senate, but of course the mode of election, whether it should be proportional representation or whether it should be based on constituencies and so forth will remain to be decided.

"The Senate should provide for more equitable representation of the less populous provinces and territories." That inevitably means there is going to have to be a proportional increase in the representation, certainly, of the western provinces and, by implication, a reduction in at least Ontario's share. Whether it goes all the way to equal, which of course is what Alberta has always argued for, or whether some kind of regional pattern could be agreed to, and what one would do about the situation of Quebec and the enormous reduction in French-speaking representation that would occur under a triple E Senate is a matter for the commission to decide.

As you know from my testimony before you a couple of weeks ago, I am very concerned myself about effectiveness. I think the way in which effectiveness is described in this document leaves open the resolution of the concerns I expressed to the committee; that is to say, it would be important, it seems to me, that the House of Commons ultimately be the dominant House of the two. I think that is protected by the phrase at the bottom, "while preserving the principle of the responsibility of the government to the House of Commons."

That is the feature which in my view distinguishes us from the Americans and makes it important that our Senate not be as effective as the American Senate. My view is that there is a commitment here to certain principles and, yes, they are probably principles which will lead to a relative decline in Ontario's representation in a future Senate. I think to say that is impossible would really be to deny the possibility of Senate reform at all.

Mr Allen: I do not recall whether you were one of the presenters who made the point, but it has certainly been strongly borne in upon us that in the longer run, politically at least, whether technically it appears that way in the documents, it would be very difficult to constrain an elected Senate in terms of effectiveness, that sooner or later the force of the degree of public representation there would have its impact in the federation in very important and powerful ways. I guess my real concern about what has happened is that this appears to commit us to much more than meets the eye and that in fact, whether the commission has got a significant role or not to batten down a lot of other items and elements, so much is already conceded that it reduces the significance of the public process quite significantly. I wonder if you would comment on that.

Dr Hogg: I think the difficulty is that the promise of Senate reform would have been a rather empty promise to Manitoba and to Newfoundland if it were not accompanied by some criteria as to the ultimate outcome—that is the reason for the sunrise provision—and also by some provisions which provide an encouragement for the process to be brought to consummation. That, of course, is the reason for the sunset provision. I think this was perhaps the softest formula that could satisfy the provinces that were demanding action on Senate reform while still leaving the process open to discussion.

In terms of effectiveness, it seems to me that the commission will obviously have to make recommendations about effectiveness and there will have to be restraints built into the institution—and constitutionalized—in order to prevent an elected body from naturally exercising its powers in competition with the House of Commons.

Mr Polsinelli: Professor Hogg, I must say that I have consistently been impressed by your ability to take very complex concepts and describe them in terms that mere mortals such as myself can understand. I am going to ask you to do that for me one more time. Can you explain to me the opposing argument, that the "distinct society" clause does in fact supersede the Charter of Rights and Freedoms?

Dr Hogg: Thank you for the compliment, Mr Polsinelli. That is a task which I do find difficult, but let me explain briefly what the argument is and why it is wrong. I think the argument goes something like this: Because the "distinct society" clause will be in the Constitution once Meech Lake is approved and therefore technically has the same constitutional status as the Charter of Rights, it is possible that the court might interpret the "distinct society" clause as having some kind of, not an overriding force but as creating a kind of exception to the Charter of Rights. In reading two provisions of equal constitutional status together, a court might decide that the "distinct society" clause had, if not primacy, created some kind of exception to the Charter of Rights. That is the concern, I think, of those people and groups which fear that the "distinct society" clause might impact on civil liberties.

1730

I think the answer to it is this: The "distinct society" clause, although it is in the Constitution, is explicitly a rule of interpretation, whereas the Charter of Rights, also in the Constitution, is not simply a rule of interpretation; it creates fundamental rights. So it seems to me to be pretty clear that the "distinct society" clause will only operate as a kind of interpretative provision, a gloss, if you like, on what are really the operative provisions of the Constitution; namely, the Charter of Rights.

Mr Polsinelli: I accept that explanation and I agree with it. I think now I understand it a little better.

Mr Allen: You agreed with it before you understood it.

Mr Polsinelli: Quite frankly, for the members of the committee, I had difficulty in understanding how the "distinct society" clause could impact on the Charter of Rights and Freedoms. I guess in my own mind I had gone through the same analysis that Professor Hogg had gone through.

One of the other ways, though, that the "distinct society" clause could impact on the Charter of Rights and Freedoms in a certain sense is enunciated in your legal opinion, or at least in the legal opinion put forward by six legal scholars in this country, because what you are saying in your opinion is that, in effect, the "distinct society" clause could and may be interpreted as modifying what are reasonable limits that can be demonstrably justified in a free and democratic society. So a "distinct society" clause can modify that concept. By modifying that concept, the Charter of Rights and Freedoms is subject to section 1 of the charter, which is "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." So your legal opinion, in a certain sense, is not saying that the Charter of Rights and Freedoms is paramount but rather it is saying it is subject to section 1 of the charter and section 1 of the charter may be interpreted somewhat differently with the "distinct society" clause being part of the Constitution.

Dr Hogg: I think that is a fair statement. If you take, for example, Quebec's language-of-signs law that was struck down by the Supreme Court of Canada, it was struck down because the requirement that all signs must be in French and must not be in English was a denial of freedom of expression. Under Meech Lake, it would be open to Quebec to argue that the requirements of the preservation of its distinctive language and culture were such an important objective that a law to accomplish that objective should be treated as a reasonable limit demonstrably justified in a free and democratic society and that therefore the law should be upheld in Quebec even though in Ontario, if we tried to pass a similar law, the law would be struck down because there would not be the same justification. In that way, you might get some additional leeway through the "distinct society" clause.

I think to make the point fully clear you have to notice that in the Ford case, which was the decision of the Supreme Court of Canada on the language-of-signs law, the Supreme Court of Canada looked at and addressed those very "distinct society" arguments. In other words, the court was, in effect, saying, "Even without Meech Lake, it is open to Quebec to offer as objectives for a law that derogates from the Charter of Rights the problems of the preservation of its distinct society." So in fact the court did look at Quebec's distinct society, and it still decided that the law went further than was necessary. The court said, "Look, you could have French and require that it be predominant, but it's going too far to actually prohibit English."

The view I have taken, and not everybody agrees with me, is that the Ford case would have been decided exactly the same way if the Meech Lake accord had been in force and the "distinct society" clause could have been invoked. Other people take the view—and I respect this as a perfectly legitimate view—others have said, "No, if the Meech Lake accord was in place, that would have given this argument just that little bit of extra weight that maybe the Ford case would then have been decided the other way." There is no way of resolving that disagreement. But it is a very narrow disagreement, because I think everybody agrees that right now without the Meech Lake accord Quebec's "distinct society" is a factor in the application of section 1 of the charter.

Mr Polsinelli: I accept that. I tend to agree with almost everything that you have said to date and that I have read that you have said.

Dr Hogg: I am enjoying this line of questioning, I must say.

The Chair: It is coming to an end very quickly, I am sure, Mr Polsinelli.

Mr Polsinelli: One final comment: While there may be some implication within the province of Quebec of the "distinct society" clause impacting on the Charter of Rights in some fashion or another—how minimally we cannot decide at this point—clearly outside of the province of Quebec and the other nine provinces and the territories that "distinct society" clause has no impact whatsoever on the Charter of Rights and Freedoms.

Dr Hogg: No. It has always puzzled me a bit that whatever effect you give to the "distinct society" clause, and if you give it a great deal of effect, all that it means is that Quebec has somewhat larger powers to pass laws than the other provinces, but the powers of the other provinces are totally unimpaired and are not affected in any way by it. So it has always puzzled me somewhat that Manitoba, Newfoundland and New Brunswick should become so excited about the impact of a clause which will not change their powers one bit.

The Chair: We appreciated your coming today again. We have enjoyed your comments and, again, thank you for coming on very, very short notice. It has been appreciated.

Mr Wildman: Does the professor agree with Napoleon Bonaparte's view that a constitution should be written so clearly and simply that a peasant could understand it without the need to consult lawyers?

The Chair: You do not expect an answer to that question, do you?

We have to revert back to the first item on the agenda, which is organization.

The committee continued in camera at 1738.

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Kaye, Philip J., Research Officer, Legislative Research Service
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Second Session, 34th Parliament

Assemblée législative de l'Ontario

Deuxième session, 34e législature

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Le mercredi 13 juin 1990

Select committee on constitutional and intergovernmental affairs

Constitutional accord

Comité spécial des affaires constitutionelles et intergouvernementales

Accord constitutionnel

Chair: Allan W. Furlong
Clerk: Deborah Deller

Président : Allan W. Furlong
Greffier : Deborah Deller

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL AND INTERGOVERNMENTAL AFFAIRS

Wednesday 13 June 1990

The committee met at 1008 in room 151.

CONSTITUTIONAL ACCORD
(continued)

The Chair: Good morning, ladies and gentlemen. The committee will come to order. To begin, I would like to welcome those who are viewing these proceedings at home. I would like to read the motion with which this committee is seized, "That the select committee on constitutional and intergovernmental affairs be authorized to consider the 1990 constitutional agreement signed at Ottawa on 9 June 1990 (sessional paper number 400) and to report to the House no later than Wednesday, 20 June 1990."

The committee has been given a very short time to perform its work. If there are groups that wish to make presentations to the committee, they should contact the clerk of the committee, Deborah Deller. She can be reached at 963-2977. Collect calls will be accepted.

Mr Polsinelli: That is a paid political announcement.

The Chair: That is a paid political announcement, yes,

RON WATTS
JAMES MACPHERSON
B. JAMIE CAMERON

The Chair: This morning we are delighted to have three of the Ontario delegation to the Ottawa deliberations on the communiqué that was issued on Saturday. They are here as a panel. I would like to welcome James MacPherson, the dean of Osgoode Hall Law School; B. Jamie Cameron, an associate professor at Osgoode Hall, and Ron Watts of the Institute of Intergovernmental Relations, Queen's University. Dr Watts, it is a pleasure to see you again. We did not anticipate that we would be having you back so soon, but we are glad to have you.

Dr Watts: Glad to be back.

The Chair: For the members of the committee, Dean MacPherson and Professor Cameron have time constraints; they must be out of here by 11:30. Dr Watts has agreed to stay later if there are still some questions that you would like to pose to him.

I understand that you have agreed among yourselves that Dean MacPherson will make an opening statement and then you will answer questions as they are directed, depending on which one of you feels comfortable with the question. Is that correct?

Mr MacPherson: Depending on which one of us knows the answer to the question.

The Chair: I am told that you know all the answers, so we are all right. I will turn it over to you for your opening statement.

Mr MacPherson: On behalf of the three of us, I would like to say it is a pleasure and an honour to be invited to attend one of the early sessions of the hearings you are having to look at Meech round 2 in the next week to 10 days. I would like to say, and all three of us would agree on this point, we are here in our personal capacities as two constitutional lawyers and one very well-known and distinguished political scientist. We will give you our personal views and we will provide you with personal answers to any of the questions. We were part of the Ontario delegation last week, but we were invited to come on that delegation as independent professors and we were told that as members of that delegation we were free to do and say what we wanted. We are here in the same type of role.

I am speaking only for myself here, and if either Professor Cameron or Professor Watts disagrees with any of these points, I am sure you will hear from them. I would like to give you literally a five-minute personal overview of my position on the agreement that was reached on Saturday night in Ottawa. I thought I would do that by literally going through the different headings in the document and making just a very few comments on each.

The first heading in the 1990 constitutional agreement is "The Meech Lake Accord." It obligates the premiers of the three holdout provinces, New Brunswick, Manitoba and Newfoundland, to try to take appropriate legislative action before 23 June 1990 to get those three provinces to be part of the Meech Lake accord. All three of them are doing that at the moment. To me, that is without question the most important provision in this whole document. It is the first one and it is the most important one.

We have a country that has survived and prospered for 123 years now. Much of that history has been, at least in relative terms when you compare it to other nations in the world, a placid time. The country holds together. You do not tend to have wars or revolutions. You do not tend to have famine. You do not tend to have a lot of the very difficult things that arise in many of the other 150 countries in the world. But there are moments, even in Canadian history, that I would describe as watershed moments.

The last three years, in my judgement, have been watershed years for the relationship between, on the one hand, English Canada and, on the other hand, Quebec. I do believe that if Canada, speaking through the federal government and the other nine provinces, had not said yes to Quebec in the context of this Meech Lake accord now, the future of our country would have been very fragile indeed. I would not have held out a lot of hope that this country would continue in its current form with the 10 provinces for a whole lot longer period of time.

To me, everything that follows and any comments we might make about the process of constitutional reform or about some of the substantive provisions that are in here, including criticisms of those substantive provisions or about some of the things that are not in here, the omissions, all of that, although relevant, must be firmly placed within the context that this was a moment when all of English Canada could say to Quebec:

"You have been a full partner in this country for 123 years. We respect that partnership and we want very badly to say to you that we are prepared to take a bare minimum of steps to signal to you our trust in you and our respect for the role that

you have played in the past and our hope for the role that you will continue to play in the country."

Second is Senate reform. Really, the Senate reform provisions are two components. The first, and by far and away the most important, is the process component for the future. It may not be that people in central Canada, and by that I include both Ontario and Quebec, view Senate reform as being a particularly crucial issue in the political agenda of the country at the moment. But as someone who is a Nova Scotian and has lived most of my life in the Maritimes but has also lived a decade in British Columbia and Saskatchewan, I can tell you that in those parts of the country Senate reform is viewed as a very significant issue in the political arena, in the legal arena, in basically the life of the country.

The reason for that is not any particular view on the Senate itself. Rather, in those parts of the country the Senate has become a lightning rod for a lot of the dissatisfaction with the structure and the operation of the federal institutions that operate in Ottawa. People, particularly in western Canada more so than in eastern Canada, although Newfoundland in the last week might belie that, but up until the last week particularly in the west there has been a very strong feeling of disenchantment towards the way in which some of the federal institutions in Ottawa operate. In BC since the mid-1970s and in Alberta more recently, but shared by Manitoba and Saskatchewan as well, there is a sense that major reform of the Senate is a possible solution to some of the disenchantment and the alienation which they feel.

So the reform process—and it is a process—which is the main component of the Senate clause in this agreement is an important one for those provinces. This clause does more than just say there shall be a process of Senate reform. It actually enunciates some principles, not to bind any of the governments that will be dealing with the reform issue in the next short while—and it is a short while; the first step is just from now until next November—not to bind them, but to point the public and politicians to some of the principles which need to be considered in any reform of the Senate.

The three are that it should be elected, that it should be more equitable—what that probably means is greater representation to the outer regions of the country; ie, the west and the Atlantic provinces—and more effective. I suspect no one is arguing that the Senate should be ineffective, so an effective Senate strikes me as sort of a motherhood statement. But those principles—elected, more equitable and effective—are important principles.

Mr Wildman: Maybe it should not exist.

Mr MacPherson: Maybe it should not exist.

The second component is the component which will kick in if no Senate reform is achieved. The major component of that, as I am sure all of you are familiar, is that there would be a redistribution in the current number of senators five years from now if no major constitutional reform is achieved. My own view is that constitutional reform is perceived as being so important in the country that it is likely to be achieved. Just as when Quebec said that the Meech Lake accord, and in particular the "distinct society" clause, was crucial for its continuing involvement and respectful participation in the life of the country, I think the time has arrived, particularly for the west, where the rest of us have to pay some attention to a decade of its saying Senate reform is very, very important to it. So I do think Senate reform will be achieved.

But if it is not achieved, the fallback is the old Senate, the current Senate—I would call it a very ineffective Senate—and the compromise is the numbers will change. Ontario will give up six senators; New Brunswick will give up two; Nova Scotia will give up two; all four western provinces and Newfoundland will gain two senators. In a sense, it will be a redistribution so that the Senate, although it will not be elected and probably not be very effective, will at least be a bit more equitable five years from now if no major Senate reform is achieved.

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Turning to the next category, category 3, further constitutional amendments, let me be very brief.

There is an amendment dealing with sexual equality rights. It is proposed to add section 28 of the Charter of Rights and Freedoms, which is the sexual equality section, to section 16 of the Meech Lake accord. That, in my judgement, is a good idea because it overcomes an omission from the Meech Lake accord. The Meech Lake accord made sure that the "distinct society" clause was subject to the aboriginal rights provision of the charter, section 25, and to the multicultural provision of the charter, section 27, but for some reason they forgot section 28, which is the women's equality provision. For symmetry, and in my view on the merits, section 28 should be added to section 16 of the Meech Lake accord.

Role of the territories: Again, an omission problem. Everybody at Meech Lake forgot about the territories. The result was that territories would not get any senators and would not get any possibility of appointing judges to the Supreme Court of Canada. This will overcome that clear error of omission. There was no intent there. I think they just forgot about the entire north of the country when they were sitting in that log house on Meech Lake three or four years ago.

As well, there will be an enhanced role for the territories in future constitutional and economic conferences where their interests are implicated, which strikes me as being a sensible, logical provision.

Language rights: Future constitutional conferences looking at the position of English- and French-speaking minorities in all provinces in the country and a movement, initiated by New Brunswick, to expand the protection in New Brunswick for the French-speaking minority, the Acadians, which are 40% of the population of New Brunswick.

Aboriginal constitutional conferences in the future: A series of conferences would be set up. They are compulsory. At a minimum, there would be one every three years. They go on in perpetuity. They have to be held until the issues of our aboriginal rights are dealt with. I would say two things, one good and one bad.

That is an improvement—and this is the good—on the process of aboriginal constitutional conferences that were held in the mid-1980s, between the charter and Meech Lake. There were three conferences, but they were three and they were stated to be three and they were pathetic. They went nowhere. Absolutely nothing was done in those conferences to improve the position of Canada's first nations. There is a chance, an opportunity here, through these constitutional conferences, to do a better job.

I guess, to me, when I say the bad point, it would be this: It is, in my judgement, crucial that the governments of this country do a better job the next time around. What happened? We got the charter, which was wonderful for all Canadians. I think we are getting Meech Lake, which is superb, in my judge-

ment, for Quebec. But nothing has been done for Canada's aboriginal peoples in any of this constitutional process in the last 20 years. I think that is the real tragedy of the whole process and I think there is now an opportunity, through these conferences, to do a better job next time. I just believe as a Canadian we need to do a better job next time.

Then there is an agenda for future constitutional discussions, the possibility of creating new provinces in the territories and future discussion of the Canada clause. Speaking just for myself, I am glad the Canada clause was not inserted in this round. I think the Canada clause, which will be a statement of all of the fundamental values of the country, is something that should be done after a great deal of consideration and requires a process that will enable ordinary Canadians and politicians to talk about it and think about it for a good period of time.

There will be constitutional reviews in the future of the amendment process and of the charter. The "distinct society" clause has a lawyers' qualifying letter. My colleague Professor Cameron is one of the signatories of that letter. I was not one of the signatories of the letter. They only asked eminent constitutional lawyers to do it and I guess I was not one of the six most eminent in the country. But I was proud of the role the Canadian constitutional lawyers played in that. It was a very important bridge between Quebec on the one hand, which did not want "distinct society" touched upon in any way, and other provinces, which were worried about the relationship between "distinct society" and the charter. I think the letter, which helps clarify that, was an important bridge at an important moment in that conference.

Then there is a provision dealing with an amendment to the New Brunswick language law.

Those are all the provisions and those would be my comments on them. I would end with just two comments.

One is that in my judgement on the merits—this is the same comment I started with—it is right, it is proper, it is timely that the Meech Lake accord be agreed to by all of the 10 provinces and the federal government in the country. I just think it is absolutely crucial—I do not put it any lower than that—for the future of the country.

The second thing I would say—this is why I wanted to say I am here in an independent capacity and these are my personal views—I was pleased with what I saw of the role that Ontario played last week. I thought the government of Ontario, its Premier, its Attorney General, had two very strong principles in mind when they went to that conference. The first was to lend strong support to Quebec, strong support to getting Meech Lake achieved and getting it achieved now. For all the reasons I gave at the start, I think that is important. I think Ontario took that position and it was right to take it.

But second, I felt that the Premier and the Attorney General were very familiar with the concerns of the Prairies and British Columbia and of Atlantic Canada and realized that Ontario could legitimately try to play a role not only of supporting Quebec but of reaching out to those other provinces and building bridges where there was a chance to build bridges. I admired Ontario's being willing to play that role. I think it is a role that Ontario historically played in Confederation.

As a Nova Scotian and as someone who has lived in the Prairies and in the west, it is a role that is admired in those regions of the country. There is a lot about Toronto and Ontario that people in those parts of the country do not admire at all. It is a big province, a rich province, it is getting a good baseball team, it has a lot going for it, and sometimes people in the outer part of the country think that they really do not gain the benefits of Confederation. So when Ontario regularly, as it has done on a bipartisan basis over the years and as it did last week, is sensitive to those parts of the country, I think it is a credit to the province. I thought the Premier and the Attorney General were a credit to Ontario and to the country last week. Those are my personal remarks.

The Chair: Thank you very much, Dean MacPherson. Professor Watts or Professor Cameron, do you have anything you wish to add?

Dr Watts: For my part, I would simply endorse everything Jim has said. I am sure you will want to explore in more depth some of those points. I will be happy to participate in answering those, but by way of introduction, I am happy to associate myself with the comments that Jim made.

Ms Cameron: I am as well. I would reinforce, for me, the importance of the securing of the agreement last week by the three distant provinces to seek the ratification of the Meech Lake accord. I agree entirely with Dean MacPherson that this is the overriding significance of the first ministers' conference last week.

Mr Allen: I appreciate very much the presentation we have had by Professor MacPherson and also the presence of Professor Watts from Queen's University and also Professor Cameron from Osgoode Hall.

In terms of the task that this committee has before it, there are a number of matters that do not particularly need to detain us. The previous constitutional committee has dealt with a number of the concerns that have surfaced time and time again in the debate and now are part of the present document that is being presented to the legislatures of the country for ratification as what has sometimes been called son of Meech.

The items, for example, with respect to the role of territories; the aboriginal constitutional question; the ongoing discussions that should stay on the agenda until they are solved, and hopefully and mercifully at the earliest possible moment; even the minority language issues, in their own way, and, in a slightly different fashion, the sexual equality rights question were all dealt with by the previous committee. We did not, indeed, deal with the sexual equality question in quite the same way; rather, by a roundabout route of emphasizing the respect for all rights of Canadians as a fundamental characteristic of Canada in the fundamental characteristics clause as a way of reaffirming section 28 and all other rights that exist in the Constitution. That was intended to cover the sexual equality provision.

1030

So my sense is that where we are at specifically in this committee is with a clarification and a further pursuit of the issue of the Senate, which was not dealt with nearly as substantially. Indeed, I think the earlier committee here at the Legislature assumed that what we would be left with at the end of all this process was essentially the original Senate provisions, namely nomination by provinces and appointment from those nominations by the Prime Minister of Canada, and whatever further Senate reform would take place would happen at a future date and we would all see what the proportions of that package were, which leads me to ask you questions principally around the Senate.

If you would not mind, I would like you to do two things for us: First of all, describe for us what will in fact be the state of the Senate if there is no formal agreement on Senate reform

in five years. What are we going to have at the end of five years when we have this slightly different configuration of numbers of representatives from the provinces in terms of a Senate, its powers, its status within the federal institutions? I think we need to get clearly in our heads what it is that we are left with at the end of the day if we do not succeed in the process.

Second, what indeed is the status of the points, the principles that are reaffirmed in the first part of the document that we have, namely the apparent clear and unequivocal commitment to an elected Senate? I want your reading on that. Is it that clear that it is in fact established as a principle that we will not depart from in those discussions from this point forth?

The other two are slightly vaguer in their character; they can be fudged and moved in a lot of different directions. The principal one I would like you to address with respect to those principles is, if an elected Senate, then how effective are we going to be in terms of constraining effectiveness by virtue of the legitimacy that election gives to a Senate and whether in the longer run we would create, through an elected Senate, regardless of what specific terms of effectiveness we laid down, a much more powerful Senate than even the terms of reference of a formal reform would give it?

I am sorry that is a long question, but those two parts, the fallback stuff, what are we going to be left with at the end of the day, and if we do get Senate reform on these terms, what are we likely to have and what will be the meaning of effectiveness at the end of the day?

Mr MacPherson: We talked beforehand, and with your permission and the permission of the Chair, we have a fairly clear idea of what we know a lot about and what we know little about. We would be inclined to divide it up. Most of the question on the Senate, Professor Watts, who is Canada's foremost expert on Senate reform, will take the first shot at. Anything on law, Professor Cameron and I will try our hand at.

Dr Watts: I take it that means that I am first up to bat on Mr Allen's questions. Given the length of the question, the answer may be also somewhat lengthy to try to cover the points. If I fail to cover them adequately, please do not hesitate to draw me out further because I do want to try to answer fully your questions.

First of all, one of the things I thought I might do, Mr Chairman, with your permission—I had hastily drafted, in fact it was faxed up to me this morning from Queen's when I knew I was coming here, a table of all the different schemes of distribution that you have had under consideration—that was in that green book—plus the Ghiz proposal and the Ottawa agreement.

I apologize for not giving it in advance, but I literally only got it from my staff at Queen's a very short time ago. I thought it might be helpful. When you start quoting numbers, it gets very confusing if you do not have something to look at. I apologize for the small print, but with 14 schemes it is hard to compress it. What the table does is to give distribution by province, numbers of seats and percentages, and by region, numbers of seats and percentages under the 14 schemes. I am not going to take you through all those, but I will make some passing references that the table will help.

Turning directly to Mr Allen's question, describing the state of the Senate if there is no agreement—that is, the fallback Senate, as one might call it—what we have been inclined to label it, although it is not an official label, is a guaranteed partial Senate reform. I think that is a good way of describing what would happen in 1995 if there is not agreement on full-scale Senate reform.

I think the thing has to be divided into two halves. The preference of all parties at the discussions, I think, was for the proper process of full-scale Senate reform, but there was some concern that if there was no guaranteed partial Senate reform agreed at this time, there might be a concern, especially in the west and the east, that Ontario and Quebec had no inclination to budge at all. On the issue of a guaranteed partial Senate reform, the idea here was to provide some good faith that we as a part of the country were willing to take Senate reform seriously.

What does this partial Senate reform really mean? I think what it means is that it is partial reform in one of the three areas. It does not touch the matter of appointment. It leaves that as set out in the Meech Lake accord, and indeed the Prime Minister, as I understood it, made the point strongly to the western premiers that this meant that while the Waters appointment would be grandfathered, that type of appointment would not occur during the period. It was not part of the package. It might be changed, of course, when we get full-scale Senate reform, but that was not part of the package of partial Senate reform. Nor was there a change in the powers. It was seen that these two points not being dealt with would be a spur to the more appropriate full-scale reform.

In the area of distribution, I think the agreement for some partial redistribution was intended as a sign of good faith to the doubters in other parts of the country that Ontario meant business in terms of full-scale reform. I was very proud, as an Ontarian, that our Premier took the initiative of showing Ontario's sensitivity and goodwill on this point.

Now, what about the significance of it? It was not, in my view, simply a ploy, a giveaway to get agreement. I think one can advance some logical arguments in support of the solution that was presented. In fact, once the Premier had decided that he would like to have this arrow in his quiver, as it were, to use if the conference was about to break down, he did ask his advisers to draft a variety of proposals. The group of us who were there to help him actually looked at four different models, at the pros and cons of them, and the one which the Premier offered was in fact the one that we thought was the best of the four possible models of redistribution.

Now, what are the advantages of that one? One, it does not increase the number of senators. The other proposals would have increased the number, so we saved the cost to the taxpayer. That may not be the total justification for it, but not an insignificant factor, certainly given that on that very day the senators had voted themselves an increase in salary that was very much in the public eye.

Another advantage of the proposal is that with the exception of Prince Edward Island and the territories, which are obviously much smaller than the typical province, you got provincial equality for all but the two largest provinces. So you had a move towards more equitability. Nova Scotia and New Brunswick joined in giving up a couple of seats to move towards that. I think it was important that they agreed to do that because it became not just an Ontario gesture but a gesture on the part of three provinces. As you will recall when I met with you previously a month and a half or so ago, whenever it was, the current arrangement is obviously anomalous, that Alberta and British Columbia, with much larger populations, should have fewer seats than New Brunswick or Nova Scotia. The current distribution is a historical accident which is now

anomalous, and that anomaly would be corrected in this process because seven of the provinces would have equality.

On the other hand, it recognized that with Ontario and Quebec, as much larger provinces, there was a real problem in bringing them down to the identical level. So it is a measure of equitability rather than of equality.

The novel part of it is the difference in representation between Ontario and Quebec, but I think one can advance a good argument on that on the grounds that I gave you when I met with you here before: that in many federal systems, the provision of weight for smaller provinces or states is coupled with a desire to ensure a proper weighting for permanent, major minority groups. We have, as I think I mentioned when I met with you before, that terrible arithmetical problem that if we give weight to the smaller provinces in Canada in a Senate, we end up reducing the representation of the most significant linguistic minority in the country. So if the purpose of the second chamber is not only to help the smaller provinces have a voice in Ottawa but also to ensure that the permanent, most significant minority has a significant voice there, to make all the provinces equal is to undo that as far as the French Canadians concentrated in Quebec are concerned.

1040

I believe therefore that the advantage of this as a partial reform measure is that Ontario still retains a significantly larger portion than the average province because of its enormous population size, and Quebec retains a proportion which is virtually equivalent to its population. It does not get more than its population within the federation, but that represents the element of duality.

I am arguing here that although it may look like a quick offer to save the conference, to save the Meech Lake accord and to save Confederation, one can, as one reflects on it, recognize that it has some real logic to it as a proposal. It guarantees a step towards one of the main objectives of the Senate, that is, more equitable representation; it gives some recognition to the objective of reflecting duality in the second chamber; it avoids the increasing of the total number of senators, thereby increasing the cost to the taxpayer, and because it deals with only one of the three areas of objectives, it leaves an incentive for more complete reform. If this proposal were a little more perfect, there would be very little incentive to go beyond the partial reform.

I hope that more or less deals with your point about the fallback provision.

Mr Allen: With just one exception, if I might, just one small point.

The Chair: I hope it will be shorter than your first point.

Mr Allen: Oh, yes.

The Chair: Mr Allen, I want to draw to your attention the fact that we are restricted for time and I would like the questions placed as directly as we can.

Dr Watts: If you want to ask me later, I am not under a time constraint.

The Chair: This is what I was concerned about, if we could come back to you, because Professor Watts will be here afterwards.

Dr Watts: I realize that was a fairly lengthy answer to a lengthy question.

Mr Allen: But it was needed to have a connected account.

Dr Watts: The second part is the status of the principles that you raised. My interpretation of the principles is that they are described as objectives, not as rigid principles not to be departed from. That is, I look upon them not as binding, rigid strictures. There is considerable latitude in them. I notice, for instance, that Mr Bourassa has already said "elected" could mean direct election or indirect election. I think I said when I met with you on a previous occasion that in some federations second chambers are indirectly elected and not directly elected, so just the word "elected" does not say directly elected. There is considerable latitude there still for discussion.

The "more equitable" again does not rigidly bind it to "equal." Certainly I think, and I argued when I met with you before, we do need to narrow the range of representation in the Senate between the largest and the smallest units. We have a much larger range there than is typical of most federations. That is not necessarily an argument for equality. There are many federations that do not have equality in the representation of units but do have a smaller range than we have between the largest and the smallest.

It does recognize duality, a point I emphasized when I met with you on the previous occasion. It is not just representation of provinces but duality which is listed in the objectives under the issue of effectiveness.

In the area of powers, I think it recognizes the very problem that I dwelt a fair bit on when I met with you before, the problem of an effective second chamber in a parliamentary federation; that is, where there is a parliamentary system. The statement explicitly refers to "preserving the principle of the responsibility of the government to the House of Commons." I think that represents a recognition that the powers need to be reviewed and adjusted.

The sorts of areas I would think would have to be looked at very carefully, and indeed the issue was often discussed up at Ottawa, are the degree to which the reformed Senate should be able to block supply, money bills, whether it should have a sort of veto, suspensive veto or requiring passage in the House of Commons? Those are all the sorts of issues I would expect the commission and subsequent discussion to deal with.

Therefore, as to your question about what sort of constraints on effectiveness would occur if it is elected, I think that is right there in the terms of reference that are given to the commission. I would add one other thing, that of course Ontario retains its veto. That was one of the significant features about the process, that the veto of Ontario on the approval of Senate reform is still there. So the farm has not been sold, if you want to think of it in those terms.

Once the commission has had an opportunity to have public hearings all across the country, assemble proposals and so on, there is then the opportunity for a full debate within Ontario, and no doubt within your committee again at that stage, for the proposals to be examined. As far as the full-scale reform is concerned, I think it provides some parameters, some general directions to work in, but does not tie it down rigidly. That is the way I would interpret it.

I might add just one other comment on the process. It is only indirect to your comments, but it was one of the initiatives of Ontario to suggest the commission process. I would like, as an observer, to say I think that was a very important contribution of Ontario. There is widespread concern that the process that led up to and indeed occurred in Ottawa over the adoption of this accord should not be repeated. Some have even described it as bizarre. We need that agreement, and this is not a

reason for rejecting it, but we need to have a better process in future.

There was also a concern that if we have only provincial legislative committees, you may have happen what happened, for instance, in Manitoba where there was no opportunity—indeed they restricted opportunity—for non-Manitobans to make presentations. There is a danger that each province arrives at its own rigid, firm conclusions with no interprovincial discussion.

The advantage of this commission, I think, is that it will provide a federal-provincial basis for public discussion before the first ministers arrive at the negotiating table, so that the parameters, the issues will be identified publicly, so that all the governments involved or all the legislatures involved—I might add that although the agreement refers to "representatives," it was strongly the view of the Ontario delegation and that of many other provinces that by "representatives" they mean "legislators"—that is, it is not a commission of experts that is being proposed.

I emphasize that point because by sheer accident, when I arrived back from Ottawa on Monday, I found on my desk a report sent to me from Australia by our opposite number at the Institution of Intergovernmental Relations entitled the Constitutional Commission on the 1988 Constitutional Referendums. The way they did it in Australia was a total disaster. The constitutional commission of experts produced four referendum questions which lost by the largest majorities that have ever occurred in Australia in the constitutional amendment process.

That has two lessons, I think. First, that constitutional amendment is always difficult. We should not be wringing our hands and saying that we are making a mess of it; it is difficult in every country. Second, I believe a commission of legislators is the better route to go in bringing together those who are involved in the political decision-making. They will no doubt want to have their experts advising them, but I think a commission of experts is the wrong route to go.

Mr Cureatz: I know we have time restraints, so we will do our best. I do not know if we have allocations or not, but not to worry, we will make sure that all members have an opportunity.

The Chair: You are so considerate. I just knew you would say that.

Mr Cureatz: Thank you.

The Chair: It comes from being in the chair.

Mr Cureatz: Exactly. I am trying to be gracious, which is difficult with the election around the corner and of course that is sort of the point in mind that I wanted to bring to the attention of Professor MacPherson. I want to tell you, professor, that you were just bringing tears to my eyes the way you were going on about how gracious Ontario was and what a wonderful job the Premier did. I am cynical enough to think that we could take a clip of that and run it as a TV advertisement for the next election, in terms of what people think about our fine Premier of the province of Ontario.

1050

Mr Polsinelli: You could use some of that footage yourself.

Mr Cureatz: That is right. Well, I feel sorry for him. He is not too well known in my riding of Durham East and I want to make sure people understand who he is so he is not confused with somebody else.

Mr Wildman: Do you mean Peter Davidson?

Mr Epp: Do you have a question?

Mr Cureatz: I sure do, except for some strange reason people want to interrupt. It must be the Chair's doing, in not being able to keep control of the committee members.

The Chair: I will exercise some control, just as you do when you are in the chair. Would you please ask the question?

Mr Cureatz: I never seem to have difficulty when I am in the House.

You were very gracious about the role Ontario took and how you have lived in different parts of Canada and how they look to Ontario. I want to merely ask, is the dropping of the senatorial seats from 24 to 18, whatever the number, fair and equitable to Ontario?

Mr MacPherson: My answer is yes, I think it is equitable. I think in the context of a conference that was about to break down, point one, the likely result of that a very, very fragile country indeed; point two, the likelihood of success in achieving major constitutional reform in the five years that has been given to the process; point three, the almost utter uselessness of the current Senate in that—

Mr Cureatz: No, you have not got my point. You see, I am elected in the fine riding of Durham East, representing fine communities like Bowmanville, Pontypool and Port Perry. That is located in Ontario.

Mr MacPherson: Right.

Mr Cureatz: I am asking you, what is the benefit for Ontario in dropping the senatorial seats?

Mr MacPherson: The benefit for—

Mr Cureatz: You are starting to sound like one of my colleagues up in the chamber—for Ontario.

Mr MacPherson: The benefit for Ontario is that it did something that in an important way helped the conference succeed, and in my judgement therein helped the country survive. I think what is good for Canada is often—not always, but often—very good for Ontario. When what you are talking about is five years from now Ontario possibly having to give up six senators in the current unreformed Senate, that does not strike me as being much of a downside against the three pluses I gave you a second ago. It strikes me as being a very, very limited downside.

Mr Cureatz: Is 23 June the ultimate deadline? Both opposition leaders brought to attention during question period the process that we are going through this very instant. It is very similar to some of the other processes we have been familiar with, be it Sunday shopping or automobile insurance, where legislation is brought forward, supposedly we have public hearings and—listen, I do not mean to be too critical of the present administration. I can remember a time, sitting over there under a similar government in which the same procedure took place. So I am not particularly being overly critical, but it is a learning experience that I think all of us here have to grasp, and maybe another time the kind of supposedly open process will indeed be open and not a foregone conclusion, as I think we have here.

This is a foregone conclusion. Basically this committee has no authority to change the commas, to change the periods. We are just a little sceptical of that and the time constraints, and as

open as it would want to appear to be—as the Chair announced over our parliamentary coverage as to whom they can write and call to make a presentation—actually nothing can be changed.

I guess we are talking about two points. Is 23 June, in your estimation, the final deadline? Does this have to be approved by 23 June? As leaders of both the opposition parties indicated, they were frustrated. They particularly do not want to stop this, in the interest of Canada, but by the same token, what about this final deadline of 23 June?

Mr MacPherson: There is no legal obligation for the government of Ontario to ratify any of this by 23 June. The only legal obligation Ontario had was to ratify Meech Lake by 23 June, which it has long ago done. So you are not legally bound to do everything else yet. You are bound to do it, I think, or to make best efforts to do it, but you do not have to do it by 23 June.

Whether the province of Ontario does it by 23 June is for you people to consider. It is a political judgement, weighing the different pros and cons. My own personal view would be that if several of the governments, but in particular those like Ontario, New Brunswick and Nova Scotia that have said that if certain things do not happen they are willing to give things up, followed through and in a formal way signalled they were serious about that, it cannot hurt in Newfoundland, which strikes me as being the most fragile province at the moment. But legally you do not have to do it. Whether you do it is for your political judgement.

Mr Cureatz: I have one final question to B. Jamie Cameron, you being one of the signatories to the additional compendium of the communiqué. It has been asked before. The Attorney General indicated to us yesterday that it was not warranted. You obviously felt compelled that it was warranted. Now that you are in front of us, might you just give us a thought or two in terms of why you felt the significance of adding it to the communiqué.

Ms Cameron: I misunderstood or did not clearly understand what the Attorney General indicated.

Mr Cureatz: What do you think was the significance of adding the additional letter to the communiqué in terms of satisfying whatever needs were required out there?

Ms Cameron: I think the value of the letter is that it shows the interaction between the "distinct society" clause and the rights and guarantees that are set out in the Charter of Rights and Freedoms. Basically what the letter indicates is that there is no absolute rule either in favour of the "distinct society" clause—in other words the "distinct society" clause does not prevail in every single case, and at the same time individual rights do not prevail in every single case. It is a situation in which there will have to be a balancing done between individual rights on the one hand and democratic values as further defined by the recognition of Quebec as a distinct society.

The letter simply clarifies that. I think the circumstances that gave rise to the letter were those in which the province of Quebec had taken the position that the "distinct society" clause must pass unamended, and at the same time there was some concern on the part of some of the other provinces that some clarification of the relationship between the two should be addressed at the first ministers' conference. The letter came up in the context of those two positions.

Mr Cureatz: Just looking at those who signed, Roger Tassé is not from Quebec, is he?

Ms Cameron: I believe he is a barrister and solicitor who had previously been within the federal civil service.

Mr Cureatz: I see.

Dr Watts: He is a former Deputy Minister of Justice in Ottawa.

Mr Cureatz: It would appear to me that pertains to not seeing anyone in terms of the status of yourselves having signed the additional letter. Is there any indication what interpretation the Quebec delegation would have on the letter? Did they see the letter? Were they comfortable with it? They did not sign it.

Ms Cameron: They did not sign the letter, nor I am aware that they were asked to. They were consulted and they did not object to the inclusion of the letter in the final communiqué.

Mr Cureatz: Fine. Thank you.

Mr Epp: I have two questions. One I will direct to Mr MacPherson, but before I get into it I just want to say that I really appreciate the contribution all of you made last week, and certainly in preparing for last week. I was very pleased with the results.

Getting back to your earlier comment, we were speaking about the triple E Senate and you indicated that as far as you were concerned it probably would not be elected. Do you want to elaborate on that? We spoke about a reformed Senate. I think I heard you say that it probably would not be an elected Senate.

Mr MacPherson: No, I do not think I said that. I think Professor Watts was dealing with the substance of the Senate.

1100

Dr Watts: Is that directed to me?

Mr Epp: I think it was your earlier comment.

Mr Grandmaître: The possibility of unelected or directly elected.

Dr Watts: If that is directed to me, it depends on whether we are talking about the full reform proposal or the fallback position. In the fallback position, of course "elected" is not stated. In the objectives for full-scale reform, the word that is in there is "elected," but there are different forms of election that are possible, including direct election and indirect election. I do not know if I am answering your question properly, so please press me further if I have not.

Mr Epp: Do you want to qualify that a little? If you are not going to have an elected Senate, or if you have an elected Senate but it is not directly elected, how would you work that out? Are you going to have a college like they have in the United States or how would you go about it?

Dr Watts: Let me be clear that I am not advocating that. I am simply indicating what alternatives are possible. There are quite a number of parliamentary federations—India and Malaysia are examples; I am not necessarily saying they are the examples we should follow, but I am just saying those examples exist—where the members of the second chamber are elected by the legislatures of what they call the states, but we would call them provinces. That is described as a form of indirect election.

I believe Mr Bourassa has ruminated about—but has not said that would be the solution—doing it in some form of electoral college. I do not know of an example where an electoral

college has actually been used, so I am not quite sure what he has in mind. All I am suggesting here is that there is a range of possibilities. Of course the one that is most often canvassed in Canada these days is direct election, but even in direct election there are all sorts of variations possible. Should it be direct election on the basis of single-member constituencies? Should it be proportional representation on a list system? Should it be proportional representation using a single transferable vote?

Even when one talks about election there is a variety of direct election procedures and there is a variety of indirect election procedures. What I am trying to suggest here is that there is still a lot of latitude under just the word "elected."

Mr Epp: You mentioned the commission that was going to be appointed some time next month, I guess. I like your idea that it should probably be elected officials. Do you want to elaborate a little on that? Do you expect one from each province provincially and one from each province federally? Do you expect joint chairs? Have you given any thought to how that might work?

Dr Watts: The details are not spelled out in the proposal and we—when I say "we" I am speaking for the province of Ontario in the process—did not, obviously, specify the precise numbers. The notion here was that the provinces might be equally represented on such a body, but whether it should be by one, two or three each is something that I think depends upon subsequent negotiation.

There was an expectation that the federal Parliament would be represented by a larger proportion; that is, to treat it as just an 11th unit was probably inappropriate when we are dealing with central institutions. Figures such as 40% of the total membership were kicked around, but no precise figure was arrived at. I would presume that the precise size of each provincial group and the precise size of the federal one is something that will be worked out in discussion between the governments involved.

I think it was our expectation that it would be important to have people chosen from the provinces who could link into whatever is the internal process in each province. I would not automatically say it would be the chairpersons of each of the relevant parliamentary legislative committees, but the notion here was to at least try to link up with the effective process within each province.

The proposal as it was advanced was not spelled out in legal detail. It was the principles of the approach that were laid out. That is why I cannot be more precise about detail.

Mr Epp: You probably ensured its success by not spelling it out.

Dr Watts: You are probably right. One of the lawyers might have been wrangling over it still.

Mr Epp: Exactly.

Mr Wildman: Professor Hogg was here yesterday, and I parenthetically pointed out to him that Napoleon Bonaparte once said that a constitution should be written clearly and precisely so that a peasant could understand it without reference to lawyers. Unfortunately, we do not seem to be in that situation.

Also, I find myself in agreement with a comment once made by the Treasurer of this province when he said that experts are people who know more and more about less and less. I am just a layman who knows very little about lots of things.

I would like to ask a couple of questions. The first one is with regard to Professor Cameron's comments about the letter appended to the agreement. You would agree, I suspect, with Professor Hogg that this in fact is as it is purported to be, an opinion, and that is all it is, and that what really matters is what the members of the bench judge to be the relationship between the "distinct society" clause and the constitutional accord and the Charter of Rights.

Ms Cameron: Yes, I think there is no question but that the letter would be admissible in any litigation, but the weight that would be attached to the letter by members of the bench would be a matter for their discretion and it would depend on a variety of factors. It is well known that courts often rely on the opinions and advice of academics.

In this particular case, the location of the letter and the final communiqué, the number of individuals who signed it, who those people are—obviously, I cannot comment further on that—the content of the letter and the circumstances of the particular case before them are going to be factors which will affect the influence the letter has in any individual case.

So it is unquestionably admissible, but the weight it will bear in any case is a matter of some speculation at this point.

Mr Wildman: It might have some more weight than an opinion from academics in opposition to your view that might be sought by the court as well.

Ms Cameron: It would be open to the court to consider its location as one of the factors that has a bearing on its weight.

Mr Wildman: I would like to go to the other main point that has been discussed in this committee, and that is the proposal with regard to Senate reform. Unlike the other issues in the agreement reached by the first ministers last week, this committee has not had the opportunity to have significant discussion of possible changes to the Senate. Neither has there been major debate in this province about what kinds of changes might be appropriate in the Senate as they relate to the country as a whole or to Ontario specifically. As a matter of fact, Professor MacPherson, I saw a TV interview with you in which you basically said that this came off the top of your head.

I would like to ask three questions. One, yesterday the Attorney General said, in line with what you have said today, that if there is no real amendment to the Senate agreed upon after the commission's work, this concession of six seats really is not of great significance since the Senate itself today is not of great significance.

Would you agree, though, that the proposal for 18 senators of Ontario now becomes the floor, in actual fact, if there is no agreed-upon amendment to make the Senate elected, more equitable or more effective, that in fact we would not in Ontario ever likely return to 24 seats in the Senate?

Mr MacPherson: You are going to have three questions?

Mr Wildman: That is the first question.

Mr MacPherson: Do you want me to try to answer that now?

Mr Wildman: If you could.

1110

Mr MacPherson: Okay. There are two parts to it. I would agree with the Attorney General when he says that the reduction of Ontario seats by six, five years from now, in the context of its

being the same old Senate we have now is not a matter of great significance. I think that is right.

In the process of constitutional negotiations over the next five years, does 18 become the new floor for Ontario in the negotiations? I do not know the answer to that. My instinct would be no.

I think the other governments would recognize that Ontario's offer at a crucial juncture of the conference last week to reduce by six in the context of an unreformed Senate five years from now was an offer that flowed very much from people walking out of the door, the conference being over, Meech Lake being dead. I think the premiers would respect that context. If the Premier of Ontario, on the advice of this committee, some day went and said, "Look, in the new reform process, we have other things to say and options to consider," I hope they would respect that.

Is it a new floor? My answer would be that I do not know, but I do not think necessarily that it has to be and I rather doubt it will be.

Mr Wildman: Professor Hogg yesterday suggested that that might indeed be the case.

Dr Watts: Mr Chairman, could I add a further point on that that I would like to just draw to Mr Wildman's attention? It relates to the table that I distributed to you.

You will notice, if you look at the proposals, that on the top line are the proposals up to 1980 and on the bottom line are the proposals that have occurred since 1980. If you look at the Ontario percentages in the different proposals there, you will notice that in virtually all of them, except the Ghiz proposal, the proposals envisaged less than 17.3%, which is what is in the agreement that was reached; that is, the 18 senators.

The total number is misleading because of course the total size of the Senate fluctuates according to different proposals.

You will notice, for instance, that the Canada West proposal, the Newfoundland one, the joint committee of Parliament in 1984, the Alberta proposal, the Macdonald commission proposal all saw a percentage for Ontario of less than 17.3%. So I would expect that Professor Hogg is perhaps right, that in percentage terms—not necessarily in numbers because it depends on the total size—that might be a floor. But the point to note is that it is not significantly less than those proposals that have been advanced from various quarters, including the Macdonald commission and the joint committee of Parliament. That is just to put it in a context.

Mr Wildman: You will also note that on every one of these proposals the numbers are the same for Ontario and Quebec, except for the agreement of last week.

Dr Watts: Yes. I think the point about duality, which I mentioned earlier, becomes the factor in terms of Quebec; that is, holding Quebec at its percentage of population is related to the recognition of the element of a major linguistic minority which would otherwise be proportionately reduced in relation to its population.

Mr Wildman: I would submit that it also recognizes the political fact that Quebec is not going to agree to fewer seats.

I would like to also raise a point in regard to the question of the recognition of the representation of significant ethnic groups, particularly the French-speaking minority. Would it not be conceivable along those lines of argument for the Northwest Territories to argue that it should have a higher number of representatives since it is the homeland of the Inuit?

Mr MacPherson: In the Senate reform process in the future, yes, I think it would be possible for them to argue that.

Mr Wildman: Okay, this is my final question. If there is indeed success in the reform of the Senate to the point where it has some effective powers to represent the smaller regions of the country population-wise, and if it is elected, and I suspect it will be because I cannot see politically how any Premier of Alberta henceforth would ever be able to propose names without having had an election in that province—politically, not constitutionally—if it is elected and has some integrity and legitimacy as a result of that and has more powers and if Ontario's representation is down and others legitimately will have higher representation, particularly Quebec, what does that mean for Ontario?

Mr MacPherson: Quebec has no higher representation. It stays at 24.

Mr Wildman: Higher than Ontario, I meant.

Mr MacPherson: A bit higher than Ontario in a non-reformed Senate or even in a reformed Senate. We do not know what it will be, but I think you have to remember that in the four western provinces and in the four Atlantic provinces, there is a genuine sense that they have very little power in the national government.

I think it is wrong to look at the numbers of senators in the future in isolation. I think it is important to recall that the House of Commons is the second at the moment by far and away most important and likely in the future to be the most important law-making body at the national level.

Let's take Newfoundland. Newfoundland, at the moment, has six senators and seven MPs, while Ontario has 95 MPs and 24 senators. For Ontario, in the secondary body, ie, the Senate, even in an invigorated Senate, to give up a little bit so that Newfoundland gets a little more when in the House of Commons it is 7 versus 95, does not strike me as being too troublesome. I would not worry about Ontario's power diminishing very much in a reformed Senate.

Mr Wildman: All I am saying is that we do not know. We are, as a committee, being seized with the responsibility of ratifying this in less than a week without knowing what it might mean and without having the opportunity to seek as wide a spectrum of opinion as possible before ratifying. That, of course, is not your problem. That is our problem and indeed it may be Ontario's problem.

Miss Roberts: If I might, I think one thing we should focus on, and maybe, Dean, you can speak to this, is that even the Senate as it is now does not break down on provincial voting. I assume that the Senate that is going to be in existence in five years' time or 10 years' time will not necessarily break down voting as a provincial block.

I assume that somewhere along the line, if we have elections, no matter how those elections are, whether they are direct or indirect, you are assuming that they are going to be voting along some type of party line or some type of interest line as well as a provincial interest. Is that not correct? And that is something no one has ever stated.

Mr MacPherson: I think that is absolutely right. I think that is a good point, a fair point.

Miss Roberts: No one seems to speak of that, as if those magic numbers were going to say, "Quebec is going to vote one

way and PEI is going to vote another way." I think we should always take that into consideration.

I just want to ask you something about process, because the commission is to start public hearings on 16 June 1990. Now, it is not necessary for any legislature in Canada to pass anything for that to occur. Is that correct? This is because of the communiqué. All people have agreed and all first ministers have agreed that this will occur if Meech Lake is passed. I assume that is going to occur even though other legislatures have not dealt with this full communiqué.

Mr MacPherson: I think that is right. I am not 100% sure. If Meech Lake does not pass, I have my doubts as to whether the commission looking into the Senate will be the number one constitutional issue in the country.

Miss Roberts: I am sure it would not be. But let's suppose it is going to pass. Many legislatures may not have looked at this full communiqué or this full amendment, but that is not going to stop the process. Is that correct?

Mr MacPherson: That is right.

Miss Roberts: You were there in Ottawa, and everyone has agreed to that. So that Senate process is going to take effect.

Mr MacPherson: That would be my understanding, yes.

Miss Roberts: I think what I enjoyed most about your comment was the important part of section 2 of the communiqué, I believe, the one that talked about Senate reform. It is the process that is there and that is the complaint we have heard throughout this for the last number of years. Right, Professor Allen? We have been talking about the process. The process is put there in that communiqué and that is the important part of that. The secondary part is what happens if the process does not come to fruition.

What I see, though, is a process unfolding that concerns me a little, and that process is that we have gone through the Meech Lake accord for three years. Then we are coming to this and when we pass this particular amendment, there are three years to go from the time that it is passed by a legislature. So there seems to be a perpetual—and this is Meech Lake 2—I do not like to call it son of Meech, because I think that is inappropriate. It certainly should be daughter of Meech, because it at last deals with the equality rights for women.

1120

If you look at the amendment that we are passing and that we are going to be dealing with, the constitutional amendment, it says only after Meech 1 comes into force and then maybe in three years' time, when there might be a crisis again, only if Meech 2 comes in force, then we will do Meech 3. That process frightens me a little. How do you see it unfolding?

Mr MacPherson: I think you have a chance here for the first time. I think all of the first ministers who signed this document were very unhappy with the process, not just the process of last week but everything in the last three years that culminated in the process of last week.

So whenever they were looking at the future, at the subject matters that are going to have to be dealt with in the future, I think they try to set in place a potential process which would involve the public and other elected officials, not just the first ministers. You see that with a Senate commission; you see that with a House of Commons committee taking the first cut at the Canada clause; you see that with the process of review of the charter and constitutional amendment formula.

So I think there is the potential—and I would not put it any higher than that, frankly—to have a better process on all of this in the future. There is also the potential for the politicians to blow it, though.

Mr Wildman: We have already got it made now. We have to prolong the process. We have a deadline of a week. You say this is a new process. This is hardly new. We are stuck with the same thing over again, right here in this Legislature.

The Chair: Mr Wildman, please. The Chair recognizes Miss Roberts.

Miss Roberts: That process, though, is going to be very important. One thing that we should be looking at is the process that we are going to be dealing with with all those things that were set out in the amendment which are extremely important.

I think maybe Professor Watts indicated this, that you thought there should be an overall public consultation and then maybe go to the legislators and have a consultation then. Could you sort of give us more information and your wisdom on how you can see that process unfolding?

Dr Watts: I think ultimately we recognized that the bases for a constitutional amendment in this country involved Parliament and the legislatures.

One of the problems of the past process has been—particularly in some of the provinces like Manitoba, just to take one example and not to castigate Manitoba at all—but there was a feeling there that only Manitobans should give their point of view. I think this was a disadvantage to the Manitoba Legislature because it did not have the opportunity to have fed into the processes what the concerns elsewhere in the country would be. Just as Dean MacPherson has been pointing out that we in Ontario have to take account of the concerns of the west or the east, similarly Manitobans ought to be taking account of the concerns of Ontario, Quebec and so on.

The problem then was how to marry the processes, that is, how to recognize a process here that has to recognize the diversity of governments in the country that have to participate in this, but also the parliamentary process where governments ultimately have to get the approval of their individual legislatures.

It is really quite a novel proposal in a way, but I think a promising one for improving the process in a way that takes account of the existence of different governments in different parts of the country, of the parliamentary process in which their governments, that is, their premiers, may negotiate positions but must have these approved by their legislatures, and of the desire to marry with this early—not late, not post-facto—public participation in the process.

So the notion was a commission of legislators drawn from all the governments involved which might hold public hearings across the country, hearing the different views. Then those representatives back in their own legislative committees and their own legislatures will have had the opportunity to hear the views of all across the country. Each legislature will then presumably follow its own rules and procedures in what subsequently follows, but this is an attempt to meet those concerns.

Whether it will work, one cannot provide a model to say it will or it will not, but it is a novel and, I think, promising vehicle for trying to deal with what has clearly been the problem over the last three years, the problem of trying to get some public input—not just some, but extensive public input, some

sense of what the parameters are of what the public in different parts of the country might agree to, before we end up with an agreed formula and a sort of take-it-or-leave-it situation.

The Chair: Can I interrupt for a moment, please? It is almost 11:30 and Dean MacPherson and Professor Cameron are going to have to leave. Does anyone have a short question for either of them?

Mr Wildman: I would just like to thank them for their input.

The Chair: Mr Allen, is yours addressed to Dean MacPherson?

Mr Allen: To Professor Cameron. I wanted to ask a question about the letter, which I think was a very important logjam-breaking device and critical to the whole process. I am very pleased that was the way in which it happened because it did allow certain escape routes for people around the table and, at the same time, did give some comfort and affirmation around the charter versus "distinct society" issue.

Can I ask you, though, a slightly different kind of question from the ones my colleagues have asked you; that is, given the context of the charter and the context of charter rights in a document which has a "notwithstanding" clause and what is reasonable in a free and democratic society, which already of course qualifies in significant measure the rights in the charter, what then is the weight or consequence of the letter?

Ms Cameron: As I might have said before, I think the letter essentially speaks to the relationship between the charter and the "distinct society" clause by locating the recognition of Quebec as a distinct society in section 1 of the charter as one factor that could be taken into account in determining which, as between democratic values and individual rights, should prevail in any given case.

Mr Allen: So it states how that section will function in the judicial process and it does not tell us directly that the rights are necessarily more protected in the judicial process. Okay? And those rights, in turn, remain qualified by the other two clauses in the charter itself, which of course allow considerable latitude with respect to them.

Ms Cameron: Yes, I do not see the "distinct society" clause as being a third additional heading of qualification on the rights but rather as an interpretative guide to section 1, to what we already know is the balancing process that will take place under section 1. I see it as an additional factor that the courts will take into account in arriving at the equilibrium between democratic values and individual rights.

The Chair: Do you have other questions of Professor Watts?

Mr Allen: No. I think my questions were satisfactorily addressed. Oh, to Professor Watts, yes, I have.

The Chair: All right. Dean MacPherson and Professor Cameron, thank you very much, first of all, for your input in this communiqué and for assisting the government of Ontario last week. We thank you very much for coming here this morning on very short notice. What you have presented is certainly something for us to consider.

Mr MacPherson: Thank you, and good luck with your deliberations.

The Chair: Professor Watts, we will keep you on the hot seat.

Dr Watts: I am feeling quite at home, given the number of times I have met with this committee.

The Chair: Good. You should be.

Mr MacPherson: This is Professor Watts's golden opportunity to answer all the legal questions.

The Chair: You mean all of those he could not answer last week because you would not let him?

Mr Allen: I want to just tidy up one little corner of the fallback provisions around the Senate, and that was, clearly, if there are no elections around any of the subsequent appointments to the Senate in the next five years, then we will indeed arrive at a point where we have only had one grandfathered election and everything will otherwise be the same except for the numbers.

None the less, it is quite clear then that after five years there is no particular constraint on the premiers—at least one would infer that from the Prime Minister's comments, because it does have a time limit—with respect to the elective process, that at that point in time one could then have senators by election and that might become a very common practice and we would in fact have a Senate composed of senators elected for life rather than appointed, well, until the retirement period. What implications do you see that having for the Senate?

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Dr Watts: My general reaction would be that people elected for life would have very little more legitimacy over the current senators, and indeed it seems to me that has been seen by some of those discussing the two proposals as an added incentive towards agreement on full-scale reform rather than the fallback proposal.

I think it would be important to bear in mind that in many of the discussions many of the delegations felt that the real purpose of the fallback proposal was to provide an incentive towards agreement on the full-scale reform. That is, they did not make the fallback proposal so attractive that nobody would go for the full-scale reform. Indeed, some of the delegations were referring to it by a variety of terms such as the hammer or the poison pill or this sort of thing.

I do not think anyone holds it up as the ideal model. It is meant really as a spur for full-scale reform.

What it did do in the readjustment of numbers, however, was to show what all the western and eastern provinces felt was likely to be an Ontario reluctance to go along with reform. What it indicated, as an indicator, was that Ontario was open to some reform of the Senate. Many of the westerners thought that Ontarians—I am using the term loosely here—talked about being willing to make Senate reform, but when it came to the crunch, would not really go along with any reform.

What this did, I think, was to indicate that this is a fallback position, a very imperfect resolution, I would argue. And elected senators—I mean, that is an abominable idea, and elected for life—nobody is advocating that it is desirable, but the point is, it would be a spur to adopt whatever other alternatives would be better.

I think that is the light in which to look at it. I certainly would not advocate "elected for life" and I do not think anyone there was arguing in favour of "elected for life." Does that answer adequately the question?

Mr Allen: Yes. The other question was, how novel is the commission idea? Is the commission technique one that is used in other countries that do engage in a rather fairly consistent pattern?

Dr Watts: The commission technique is not unique. What is novel about it is the precise variant of it that is proposed. Both Switzerland and Australia have used constitutional commissions. I mentioned the book—I did not have it with me in Ottawa; I received it just after I got back—which described the commission process as used in Australia, although there it was a commission of—they used the the words "eminent persons" and so on and I think they learned some lessons from that process.

Switzerland is part of the effort at total revision of the Constitution which was begun in the late 1960s. It has used several commissions in the process, so the notion of a commission as such is not a novel idea, but the particular way in which it is set out here and the emphasis upon the fact that it should be legislators and not simply experts or eminent persons is, I think, the novelty of the approach.

It recognizes that ultimately Senate reform is not something to be designed by experts but represents a political decision of the country and therefore a political decision in which all the governments of the country have to participate. In that respect, it is a recognition of political reality.

Mr Allen: I would presume that there are various variants and embroideries that could be worked out with respect to this. For example, I guess one would hope that such a commission would have not only formal representatives of government but representatives of all parties represented in legislatures and that there might even be an occasion in the process when, for example, a kind of constitutional assembly of the full standing committees on constitutional reform of all the legislatures might be summoned to really give a fairly broad review of the direction and course of constitutional reform.

Dr Watts: I think so and, as I say, it is laid out in broad terms. Therefore it will define itself as it goes along. That, in part, is one of the reasons for picking a five-year period rather than three, because if you rush it too much, there may be hasty decisions about the process itself. We have learned, I think, as a country over the Meech Lake process, which was really the first effort to use in a major way the 1982 amendment process. We are relatively inexperienced as a country with this sort of a process because we only adopted a procedure in 1982. I think we have learned that we must take the public into account much more and we have to refine this.

I would hope also that the various delegations would ensure that this adequate representation of the significant minority groups, the aboriginal people, not to say the least, multicultural groups—you know, that sort of thing. Surely, every legislature and the federal Parliament are going to be concerned to make sure that there is an element of representativeness there. It is not for those of us who are speaking to say what the precise formula should be, but I would be very surprised if the individual governments were not sensitive to the need for representativeness there.

There is one other element that perhaps none of us mentioned that is worth mentioning. When we were discussing this proposal—and it was an Ontario proposal—among the advisory group and kicking it around, it first came up as a possible procedure for general constitutional reform. That is, how do we open up the process to the public to make constitutional reform in future a better process? Then, as we discussed, we thought, "Well, let's try it with the Senate proposal first, see how it works, see what modifications to it might be necessary." If it turns out to be workable, I would foresee that it might become a process that relates to subsequent major constitutional reforms in other areas, so in that sense it is a bit of a pilot project, although for the moment let's try to make it work on this one area. That would be my advice.

Mr Grandmaître: I am still a little concerned about the adequate representation. I cannot imagine 15 or 20 people sitting on this commission and agreeing. Their responsibility, I think, will be to make recommendations to the premiers and the federal government, but I am always concerned about the number of people sitting on these committees, or that commission. I realize and I understand that everybody should be represented on that commission, but what would be an ideal number for you? That is a difficult question.

Dr Watts: Yes. I would have to honestly confess that we did not consider the precise number, and I am a little hesitant to be precise and fix on it because it involves a certain amount of reflection, consultation among groups and there is always the danger that it becomes too large and unwieldy and so on.

On the other hand, I think clearly the representativeness has to be sought. It is a bit of a copout, but I am a little reluctant to specify a precise number simply because I think it requires more careful thought and I would hate to suggest a number that then precluded other alternatives. One would certainly not want it to be too large.

If you take each province, there are 10 provinces right there to begin with. If you assume the federal Parliament is represented by something like 40% of the total or something like that, you are right away up to something like 14 or 15, and that is only one per unit in terms of the provinces, and that would preclude trying to get in other views. So I suspect, as a minimum, it would have to be a rather large body, possibly something like three per province.

Miss Roberts: I have reviewed the communiqué and they use the term "constitutional conferences" throughout. Sometimes they put "first ministers" in front of it. Is that what they mean in each particular case? There is nothing in there that envisions a constitutional conference above and beyond—such as, if you look at page 2, "Language issues: Add to the agenda of constitutional conferences matters that are of interest to English-speaking and French-speaking" In the aboriginal one, they say "First ministers' constitutional conferences."

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Dr Watts: Yes, I have not checked the wording, but I have assumed that when they use the words "constitutional conferences" they mean the provision that there should be a meeting of the first ministers devoted to constitutional issues. I presume that what they mean is a first ministers' constitutional conference. The Meech Lake accord itself required those to be held at least annually, so I am assuming that is what is referred to there.

Miss Roberts: Maybe that is something that will come out of this commission. Was that spoken of in any way, shape or form, that there would be constitutional conferences that would invite the public to be a part of that process, or a more open process?

Dr Watts: I think about all I can do is draw attention to what is, on my copy at least, page 3, under section 4, "Agenda

for Future Constitutional Discussions," subheading (3) where they say, "The Prime Minister and all premiers agreed jointly to review, at the constitutional conference required...the question of mandatory public hearings prior to adopting..." and so on. I assume that is something that will come up for future discussion. Certainly, to my knowledge, that was not something that was set down or mandated at this occasion.

Miss Roberts: This package, this final communiqué and, in particular, the amendment that we are being asked to look at and to bring a report back on, is very much process-oriented. That must have been on the minds of all of you down there. Is that correct?

Dr Watts: I think that would be quite fair to say, because it seems to me that process has been a major part of the problem over the last three years and a recognition that we must, as a country, improve the process for the future, particularly the public input.

Mr Mahoney: I have one brief question on process. The requirement that an amendment must be dealt with three years after the first Legislature passes it—do you see that? I do not think the public totally understands why 23 June is such a magic date, that in reality it was the Quebec Legislature three years ago 23 June that passed the accord, thereby through the constitutional amendment formula setting the date of 23 June 1990. I think people think it was some arbitrary date picked by the Prime Minister.

Do you have any comments on whether or not the process that automatically sets a date three years hence should be changed, aside from public involvement?

Dr Watts: I would start by drawing attention to the fact that this is one of the issues that was identified in the same paragraph I just referred to as something to be reviewed. So it is certainly going to be considered.

I quizzed Peter Meekison, who is an academic who has written a great deal on federalism and who happened, at the time, to be the Deputy Minister of Intergovernmental Affairs for Alberta when the new amendment procedure was adopted in 1981-82, and it was an Alberta proposal. So I asked him why the time limit, why they chose that, what its significance was and so on. I did this up at Ottawa just to try to draw him out. They, I think, did not give it an enormous amount of thought in 1981. They had recognized that in the United States, Congress sets a time limit for each constitutional amendment; that is, a specific ad hoc time limit for each constitutional amendment within which the required majority of states must approve it. Therefore, when they were drafting this new one they thought it was appropriate that there should be some time limit, and rather than simply leaving it to the discretion of Congress, they apparently thought it might be worth while to have it set out in the Constitution what the time limit is.

You are quite right that this is not something that is discretionary. To change the time limit would, I presume, require an amendment to the Constitution itself. So it is not just that certain political leaders or Mr Bourassa says, "We've got to have it by the 23rd." It is right in the Constitution, as a result of what was put in way back at the agreement in 1981, which was embodied in the constitutional amendment of 1982. Whether it is appropriate—many of the amendment processes in the United States have certainly taken much more than one year, and in the case of the equal rights amendment, Congress extended the deadline in order to try to get it approved.

There might be some question about shortening it when we are talking about giving the public adequate time to discuss it. On the other hand, it is quite clear that in our parliamentary system—and it does not break quite that way in the United States—you get many governments changing during the three-year period. In the American system you have the set elections, so you know when the elections are going to come up.

This creates problems about a process that ends up on average—and it is not unusual that there should have been at least three changes of government. There were more elections than that, but not all the governments changed. There might be on average three changes in three years. You are bound to end up with governments coming into power during the period which were not party to the original agreement, so I think there is a real problem about the time limit.

My own inclination would be not to change the time limit, but to urge more rapid passage and consideration. When I say more rapid passage and consideration, it was not brought up in some of the legislatures, certainly in New Brunswick and in Manitoba, before the governments fell. I think that is part of the problem. But if you have too tight a time limit, then you constrain the opportunity for public discussion, so there is a dilemma here.

Mr Mahoney: I guess also you could have a number of governments change even if it was a one-year time limit. That same situation could occur.

Dr Watts: That is right. My inclination is to say that the real problem is not that the time limit is there—I think to have no time limit means that an amendment may be in limbo for years and years and years, and then all of a sudden the government comes along and ratifies it and it comes into effect 11 years later or something like that. That would be an intolerable situation, because there would be so many other changes in the interim.

I think it is reasonable to have a time limit. I think it is better specified in the Constitution than leaving it to the discretion of Parliament. But I think that what we have learned as Canadians is that we should not leave it dangling there on the assumption that it should be settled in the last few weeks. It ought to be attended to much earlier than that. I do not hold with the view that it should be left until there is maximum pressure on there in the last month.

Mr Mahoney: It seems to me, Mr Chair, that it would behoove all of us to ensure that the public understands issues such as that, because one of the most constant questions I have received, in recent weeks particularly, is, where did this magic date of 23 June come from? I do not think it was ever explained properly, at least to the public, that indeed part of the Constitution set that date, and it was not some arbitrary figure picked by someone in government.

Dr Watts: We imposed it on ourselves in 1982.

The Chair: You have helped in communicating that today, thanks. A final short question, Mr Wildman.

Mr Wildman: It has been said before this committee that legally there is nothing special about the 23 June date for this Legislature since we have already ratified Meech. So in this situation we do have an arbitrary time limit set by a politician, namely, the Premier, with regard to the ratification of this agreement.

If this agreement is ratified next week, say, 20 June or 21 June 1990, by the Ontario Legislature, then that means there are

three years left for other legislatures across the country to complete their ratification. If this Legislature were not to meet the deadline of 20 June next week, that would not in any way jeopardize the final ratification of this agreement reached on 9 June, would it?

Dr Watts: I am not sure, and let me explain why. I wrote a study that was published about a month ago looking at the parallel of the American experience when that Constitution was adopted. One of the real conundrums that arose there was when additional amendments were proposed by the antifederalists. There was the question of when the federalists agreed that they would implement those. There was the problem of trust and certainty: "How can we be sure," was the question that the opponents had, "that those in support of the new Constitution will honour that?"

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This has been what has bedevilled the situation and was often referred to in Ottawa during the course of last week by the Manitobans and the Newfoundlanders especially. They said, "Where is the certainty, if we pass Meech Lake, that the points of agreement that we got at this conference will ever be adopted? Given of course the problems we have gone through and the three-year possibility, what happens?" The Manitobans especially made this point. They said, "How can we be certain that the concessions to meet our concerns that we are promised will be adopted if we now go out on a limb and adopt Meech Lake?"

It seems to me that in that situation—and it is a political judgement, quite right; it is not a legal requirement—passage before 23 June could have a significant impact on the political acceptability of the accord in Manitoba and Newfoundland.

Mr Wildman: This is the previous accord you are talking about.

Dr Watts: That is right.

Mr Wildman: I was talking about this present accord.

Dr Watts: But they have to adopt the Meech Lake accord and they have said throughout that they would not adopt it unless they were certain—and they used the word "certain"—that these additional points would be adopted.

I would argue—I am not arguing for a government; I am arguing for the Canadian situation as an academic outsider, as it were—that it could be enormously important in the final drive in Manitoba and Newfoundland to be able to say, "Look. Ontario not only agreed in Ottawa to the add-ons that you have been pressing for but, as a sign of good faith, they have actually adopted it in their Legislature."

Mr Wildman: I understand that, but my question was really in regard to this accord, not the 1987 accord.

Dr Watts: But my point is—

Mr Wildman: I understand your point, but I want to deal with my point.

Dr Watts: Fair enough.

Mr Wildman: The fact is that if we ratify it now, then there are three years for the other legislatures to ratify it, it may encourage the dissident provinces to ratify Meech before next week or by the end of next week. But then there still is the question of whether or not other legislatures will ratify this current agreement reached on 9 June. It is conceivable for whatever reasons that, for instance, Quebec might not ratify this in the three-year period and then nothing happens.

Dr Watts: That is always conceivable under our amendment procedure which we have inherited from 1982. I would hope and I understand that presumably if Meech Lake is ratified, it will be ratified accompanying, that is, both will be ratified at the same time presumably in Newfoundland, Manitoba and New Brunswick, since they have insisted all along that the two go together. So you have four other provinces there right away which would ratify the accompanying one. Bear in mind that some of the points in the add-ons only require 7 plus 50; some of the points that are identified here do not require unanimity. Therefore, you do not then have to wait for full unanimity.

Mr Wildman: Which ones require unanimity? The Senate?

Dr Watts: I wish the lawyers were here to tell you which ones. The Senate requires unanimity certainly, but a number of the others—one would have to go through them one by one—I think the one on charter and equality rights only requires 7 plus 50, for instance.

Mr Wildman: Aboriginal?

Mr Allen: That is just process.

Miss Roberts: Most of it is process.

Dr Watts: Yes, aboriginal, the language issue, and so on. Bear in mind that for a lot of those you are not under quite the same strictures that we have been working under up to now. The other thing is, of course, because many of those other provinces want Senate reform, one could expect that they will move fairly rapidly in those.

Mr Wildman: That is why I used Quebec as an example. I doubt they are as determined for Senate reform as other provinces.

Dr Watts: I would suspect that, from the Quebec point of view, they will want to make a point of not ratifying it before the 23rd, simply because they have emphasized that they want Meech Lake first and then the other. I do not think they have much to lose on the other, and therefore I do not see reasons for their not going ahead with the procedure.

The Chair: Thank you very, very much, Professor Watts.

Dr Watts: Mr Chairman, could I take a minute to add one point on a question that Mr Wildman directed at Dean MacPherson? I would dearly love just to add a comment on it. That was the question about whether giving six away is being equitable to Ontario.

Mr Cureatz: That was me.

Dr Watts: Oh, was it you? Sorry. Okay, I had it jotted down here. You are right. My apologies. I am finishing off with you. I jotted notes down here and did not put the names and I lost track of who raised it. I wanted to raise the point simply that the question was, "Was it equitable for Ontario?"

Of course, the question of definition of equitability can be very broad. All I wanted to say, however, was that in terms of ratios of representation for regional units in most federal systems, the ratio of 18 to 8, leaving Quebec aside for the moment, in terms of the other provinces would be one of the largest

ratios within existing federal systems. The more standard is either equality or something in a ratio of about five to three. Therefore, in that sense—and I believe in the Canadian case, given the range of population, you might want to go more to something like the five to three, if we were to follow examples elsewhere, but I am not advocating it as the solution—I would regard the 18 to 8 as not an inequitable one.

In the particular case of Quebec, because it is a departure from past practice, I would argue that one can make an argument in equitable terms in the second chamber, where you are trying to represent minorities, that a significant minority like the French-speaking, permanent minority in this country should not have its representation in the second chamber reduced below its population. That is really the figure that they have got.

I am not arguing that they should have more than their population in the upper House, but I think if you push them down to the equality level, you reduce them to something like one tenth or one fifteenth or so on. That runs counter to the effort in most federations to represent such minorities. So what I am saying is, I do not think it is inequitable.

Mr Wildman: I look forward to Chief Peters's response.

Mr Cureatz: I think what I heard, both from you and the dean previously, was that it was equitable for Canada but not for Ontario.

Dr Watts: No, that is not what I was saying.

Mr Cureatz: Well, that is what I am saying.

The Chair: But you are not always right.

Dr Watts: In answer to the last point, I would hope that in the full-scale reform there will be a real effort brought to ensure that there is adequate representation of groups like aboriginal peoples and so on. That is something that I hope would be addressed in the full-scale reform. Clearly, the fallback position does not address that.

The Chair: Thank you very, very much, Professor Watts, for appearing before the committee again. I want to thank you for your contribution to the communiqué and for coming this morning on very short notice. We appreciate it.

Dr Watts: I look forward to appearing before you after the commission reports.

The Chair: We look forward to that as well. Thank you.

The committee continued in camera at 1158.

AFTERNOON SITTING

The committee resumed at 1539.

CHIEFS OF ONTARIO

The Chair: Our first presenters this afternoon are the Chiefs of Ontario. We are pleased to have with us Gord Peters, regional chief of Ontario; Bentley Cheechoo, grand chief; and Fred Plain, elder.

Gentlemen, we have allowed a half-hour for your presentation. You can divide that whichever way you want. We would appreciate, however, if we had some time left for questions. I am afraid I am going to have to try to hold us to the half-hour, so would the members would make their questions brief, and could the answers be brief as well, please?

Chief Peters: We will be giving a presentation that will probably take 12 to 15 minutes and we will have the opportunity for about 15 minutes for questions.

The Chair: That would be great.

Chief Peters: Since you have already introduced the members we have present with us, we will get started. First and foremost, we would just like to remind people again that we represent and co-ordinate, on behalf of the first nations communities in Ontario, approximately 130 communities with over 100,000 status Indians.

I speak on behalf of the first nations which reside within Ontario. It is with great reluctance that I speak to you today, as we all know that these hearings are meaningless. In his comments to the media yesterday, Premier Peterson stated that this exercise is designed only to appease Newfoundland, specifically Premier Wells. Mr Scott, the Attorney General, added that these hearings will provide comfort to those who seek comfort. However, we feel that we must once again remind the government of Ontario of what we believe is our place in this land. If you as individuals can open your hearts and your minds as people, we believe these hearings can serve a purpose.

We are the first nations of this land. In Ontario alone there are 14 distinct nations of original peoples. We are the Ojibway, Cree, Odawa, Pottawatomie, Algonquin, Mississauga, Delaware, Chippewa, Mohawk, Oneida, Onondaga, Cayuga, Seneca and Tuscarora. It is important that we remind you of the continued existence of our nations. You must understand that each of us, as nations, possess our own histories, languages, cultures and institutions which are as distinct from each other as we are distinct from those of the European peoples who have come to settle on our lands.

We, the first nations, take pride in our ability to survive, to maintain our identity, to pass on to our future generations the knowledge and the understanding of the past so that we may continue to survive and flourish as peoples. We have faced, and continue to face, innumerable obstacles which prevent us from exercising the basic human right to determine the course of our own lives.

The closed doors behind which descendants of European peoples make decisions about the fate of our nations are one of the major barriers we face. We have never given our consent or approval for our rights and our future as nations to be determined by any other government or nation. Since 1867 first nations have been manipulated like puppets on a string. This cannot and will not be tolerated any longer. The rights of the first nations cannot continue to be determined by decisions made in back rooms by federal and provincial governments. These decisions continue to threaten our existence as a people. The Meech Lake accord entrenches into the Constitution of Canada systemic racism.

We are told that the purpose of the accord was to bring Quebec into the constitutional fold as equal to the other nine provincial governments, yet this agreement directly affects the foundation of our historical relationship with Canada. The accord states that there are two fundamental characteristics of Canada, the English-speaking peoples and the French-speaking peoples, and that one of these is a "distinct society." This is the "two founding nations" theory which only serves to falsify history and to deny the existence of our inherent rights. Our nations have long, rich histories on this land which predate the arrival of European peoples on this continent. It is particularly repugnant to our nations that our great history on this land can be disregarded with the stroke of a pen. To quote our national chief, Georges Erasmus: "Why then do we continue the myth of only two founding peoples and only two languages? Why put a fundamental lie in Canada's Constitution?" The Premier of Ontario has missed the opportunity, the best opportunity in recent years, to correct this lie.

The closing statements by the first ministers of Canada exemplify the attitudes of the settler governments towards our nations. Once again we are told by the Premier of British Columbia how he immigrated to our homeland and prospered and how many of our citizens fought for the freedom of his homeland. Our ancestors fought and died for the same freedom that is now denied to us. It should be offensive to all people who believe in fundamental justice that this situation still exists in Canada today. It is an affront to the first nations that 11 first ministers, whose histories are based in other lands, have assumed the power to extinguish the basic human right of the first peoples to self-determination.

Premier Ghiz attempted to justify the Meech Lake deal based on the fact that Canada is only 123 years old while the French have been present for 350 years. Mr Ghiz and the other first ministers ignore the fact that this has been our homeland for thousands upon thousands of years. If being here for a mere 350 years can justify recognition as a distinct society, then how can we still be treated as immigrants in our own land?

We, the first peoples, have no problem with the recognition of Quebec as a distinct society, but not to the detriment of the first nations. The accord is evidence of the general lack of political will on the part of the first ministers of Canada to deal in a just manner with the original nations of this land. The emphasis on the English-French duality suggests that all other cultures must assimilate into one or the other of these societies. This is the argument put forward by the Meech Lake accord. We have been the target of forced assimilation for over 100 years and we have survived.

It is necessary to respond to the misinformation disseminated by the first ministers regarding our nations. The Canadian public is being told that concessions were made in the interests of aboriginal people. We all know this is not the case. The only thing the first ministers agreed to was a post-Meech amendment that includes further constitutional conferences that "shall have

included in the agenda matters of interest to the aboriginal peoples." This process ensures that first nations are subject to the whim of the first ministers. It perpetuates the myth that until the first ministers decide otherwise, first nations have no rights.

We are included as invitees rather than as full and equal participants. This is a continued denial of the treaty-making process. If there is anything that constitutes a relationship between two nations, it is that which exists between the aboriginal people and the Europeans. The treaties signed in good faith by our ancestors formed the foundation for the very existence of Canada.

Over the past several weeks leading up to the 1990 constitutional agreement, the people of Canada have been publicly searching for their respective identities and attempting to address the way we relate to one another. During this period of introspection sparked by the Meech Lake debate, the politicians as well as the media have evoked historical images of Canada that serve to glorify the Columbus syndrome. How often we have heard the name of Cartier in the past several weeks and his courageous journeys through our territories? Let history show that he travelled with the guidance of our ancestors and would not have survived the journey without them.

The media and the politicians alike have been guilty of portraying the myth that the history of Canada only began with the arrival of your forefathers in our lands. Your identity as Canadians rests in the existence of the first nations in this land, for your history has been intertwined with ours throughout the past few hundred years. We are your conscience on this land; we remind you of the fundamental human relationships of justice and sharing. Each time the wealth of this country multiplies, remember it has done so on our land, with our resources. We have contributed more than our fair share to the development of Canada.

Amending the Constitution via the Meech Lake accord does not alter history. The truth of history will reveal itself. You will eventually have to deal with the fact of our existence. We must revisit the matter of our relationship if we are to coexist together in peace.

That is our presentation, the words we have brought to this forum within the provincial government many, many times. We will gladly respond to any questions that you have.

1550

The Chair: I understand you have been joined now by Grand Chief Harry Doxtator. Welcome.

Mr Wildman: Thank you very much, Chief Peters. I think I understand very well the position of the first nations of this country as espoused by yourself, Chief Erasmus and others.

In essence, you would argue—and certainly I would be in agreement—that the process we have gone through over the last number of years, not just the three years since 1987, was wrong, in that the aboriginal people of this country were in effect excluded from the process, and that you as aboriginal people, indigenous people, have the right of self-determination.

Having said that, you must understand that, rightly or wrongly, we as a committee have been directed by the Legislature to hold hearings on the agreement that was signed in Ottawa by the first ministers on 9 June and to report back to the House by 20 June. So obviously we do not have a great deal of time to deal with the very complex issues related to the rights of the aboriginal peoples of this country, as well as others, as they relate to the agreement in Ottawa.

Just personally, I would say that I am sure I share with you a great deal of sympathy with Chief Harper's position in the Manitoba Legislature.

Having said that, as a representative of what you would refer to as a settler government, can I ask you a couple of questions regarding, first, the provision for further aboriginal rights conferences as set out in the agreement that was arrived at in Ottawa and, second, with regard to the proposals for Senate reform that are set out in that agreement?

First, as I understand it, the agreement is that the process is set out where conferences will have to be held involving the aboriginal people and the first ministers—I guess the term was used by an expert this morning—in perpetuity until those issues are resolved. What is your response to that process?

Chief Peters: I guess you have asked a couple of questions. First, we recognize that there is a very short time before the proposed process will end on 23 June. I guess we recognize that as part of the dilemma you are in. We have gone through the same dilemma for five years in the constitutional process with the first ministers.

First of all, we are not sure—and maybe you can apprise us of the situation. You have a mixture of items requiring approval by the 10 provinces and the federal government and some that require only seven provinces and 50% of the population. Our understanding is that in order to pass that post-Meech Lake amendment, you are going to need unanimity. As far as we understand that, that is still quite a task to be held in relation to where Quebec seems to lie in this situation about any post-agreement.

If, in fact, 10 provinces and the federal government do pass the post-Meech Lake amendment, we feel that the aboriginal constitutional conferences which will flow from that could be the very stalling ground that we faced for five years in the mid-1980s. We know and understand very clearly that there has not been any implementation process attached to any constitutional process for aboriginal people. We have gone from conference to conference, sometimes preparing as late as a month prior to the beginning of a conference, and based on the kind of process that we have had, we have guaranteed ourselves that there would be a failure at the end of that time.

We do not feel virtually positive that we will be dealing exclusively with a relationship process. We think we will probably go back to the same format where the federal and provincial governments will again have us believe that they have the power to create rights in the process, and we do not want to get into that debate again. So unless there is some very strong clarification as to what the process does, and there is agreement between ourselves and the federal and provincial governments on that, that process of perpetuity will guarantee that we will never be able to exercise our rights without the consent of the federal or provincial government.

Mr Wildman: In essence, what you are saying is that if it is to have any chance, the terms of reference or the process by which it is going to occur will have to be determined not just by the federal and provincial governments but by them in consultation with the aboriginal people and the first nations.

Chief Peters: There will have to be something that is very clearly spelled out, and part of that would have to hinge upon the agreement, in the development of the counterclause, that it would be included in the body of the Constitution so that it would be very specific that the constitutional conference process was, in fact, the implementation of the jurisdiction and the discussion about the relationships, about how we would

deal with the overlap of jurisdictions between the first nations and the federal and provincial governments.

Mr Wildman: I just have one other question. I do not want to get into the debate, as I think you do not, about whether rights exist already that should be recognized or whether they are being created. I know that argument and I have some sympathy with your view.

I would like to deal specifically with the Senate. It has been suggested by some constitutional experts who have appeared before this committee that besides recognizing or representing the regions of this country, a new Senate should also recognize the ethnic diversity of the country, and there would be very good arguments for the aboriginal peoples, the Inuit and the Indian first nations to have some reservation of numbers of seats in a new Senate. Have the first nations discussed that? What view would you have on that kind of proposal?

Grand Chief Cheechoo: In response to your question about Senate reform, I think there are fundamental principles that have to be dealt with here within the Constitution. First of all, we have not even completed the first round. We talked about self-government in 1987 and how that failed, and now, all of a sudden, again the first ministers are putting a new agenda item on the table that we see is going to alter our relationship with Canada by putting an elected Senate in place as another governing or decision-making body within the fabric of this country. If you will recall, in 1987 we proposed to the first ministers an amendment to the Constitution that called for self-government. Everybody around the table said, "We don't know what that means." Now, all of a sudden, in 1990 the first ministers have agreed to a "distinct society" clause in the Constitution and we do not even know what it means.

When it comes to the first nations, we are talking about a very distinct group in this country, the original people of this country, and yet we are not accommodated in any way in all of these processes. We are left behind because, we are told, from what I understand from the Premier: "You have a process over here talking about the Canada clause. This Senate reform is our process." If you are going to change the fabric of this country and the relationship to this country that we have as native people, I think we have to be included.

1600

Mr Eves: Chief Peters, you may be aware that in the previous incarnation of this committee with respect to constitutional reform, we did come to some conclusions where we tried to address some of the concerns of the aboriginal peoples of this country. One suggestion was a companion resolution which would amend subsection 2(1) of the Constitution Act of 1867, as changed by what we call the Meech Lake accord, the 1987 constitutional agreement, so that there would be a recognition of aboriginal peoples as a distinct and fundamental characteristic of Canada. Unfortunately, the majority of members of this committee chose not to accept that suggestion.

The majority of the members of the committee did, however, make some suggestions or recommendations with respect to dealing with our aboriginal peoples. Now I am somewhat disappointed, I must say, to see the particular language in which the first ministers have chosen to word their 1990 constitutional agreement. Their only reference to aboriginal peoples, basically, is a vague promise to include on the agenda, to quote them, "matters of interest to the aboriginal peoples." They do not even come out and make a direct reference to self-determination. I would have thought that was the least they could have done.

Mr Wildman has explained to you the dilemma, I suppose, that individual committee members find themselves in, where we are being told by the Premier—I asked him this question in the House today—that we have to not only deliberate with the committee, but he expects the Legislature to pass this by 20 June, a week from today, next Wednesday, despite the fact that we had advice from a constitutional expert yesterday, Professor Hogg, that as far as he is concerned, legally we have three years from the time the first Legislature anywhere in Canada chooses to adopt the 1990 constitutional agreement. We legally have three years to adopt this.

I would like to know what your feeling is about the time limit and what advice you would offer to members of the committee, in particular in dealing with matters of grave concern to the aboriginal peoples. What message would you give to us to take back to the House as a whole?

Chief Peters: First of all, I guess the first message that I would understand very clearly must be delivered is that I believe, and it is the opinion of many of my colleagues the aboriginal leaders, Canada will not fall apart if the Meech Lake accord is not passed. I do not know what would happen to Canada to cause people to believe it would fall apart. I do not believe that people would welcome the United States with open arms, because certainly provinces have tremendously more power now than states do. I do not know what people would envision as becoming of Canada.

I think the Premiers all agree that the process they embarked upon with the closed-door sessions was not the process for amending the Constitution. It was very easy for them to say, "Yes, we inherited this process and because we inherited it, we have to carry on the tradition." I think leaders of vision and courage have to take responsibility to ensure that the rights of various people, including the aboriginal people, are dealt with in an effective manner prior to any kind of amendment to the Constitution.

We know that Mr Wells also asked for the extension based on the same kind of proposal and we understand that everyone is trying to meet the 23 June deadline.

That is the only message I would have, because it is clear that, as much as we think the aboriginal issues are complex, we agree that the process of constitutional amendment is also complex. We are now setting the future agenda for all peoples to live with, and that is something that all people should have the right to at least be informed about as to what they would like to see in the future for Canada.

Ms Oddie Munro: First of all, I would like to thank you very much for coming before the committee because I think that your input is important to it. I know you have been involved in the process for a long time, and I think it is accurate to say that we respect and hope that you will continue to be part of the process in your own sense.

If you were to receive clarification—and I do not know which way all the provinces will go either—as to what the process means, can I take it that you would continue to input on the various aspects of what we have before us, not only Senate reform but the constitutional amendments and a number of other issues? I think it is critical, especially when you look at the Canada clause and at the commission that will be going across Canada, that your voice is here. I know that is difficult and I know what you probably want to say to me, but I took at

least some positive response from what you were saying. If there were some way that there could be clarification on process, would you be taking part in it?

Chief Peters: That is a gigantic leap of faith that you are asking us to take again. I am not saying that with any disrespect. We accepted in this past decade many commitments to deal with our items at the number of first ministers' conferences that were held. Now, again, we feel that we are minimal add-ons in the process. I think to clear the conscience of the premiers, they simply said, "Let's establish this process on the side over here to make sure that we don't leave out the aboriginal peoples this time around," but there is nothing of substance that we can deal with. We would need some kind of show of substance that would deal with our relationship in Canada.

Perhaps you do not even need to go to a constitutional process to do that. The federal government has not shown any kind of leadership capacity whatsoever in dealing with aboriginal people, even though it is supposed to be our trustee. Entrenched in the Constitution already is section 35, which recognizes and affirms existing treaty rights. Why have we not embarked upon a treaty implementation process? That does not exist. Why have we not embarked upon something with the province of Ontario? We started off last year to try to create a discussion, a dialogue, with Ontario to figure out what kind of roles we played, where we fitted in, how things were going to happen.

Right now I think with the recent Supreme Court of Canada decisions, if the courts are leaning in our direction, if the courts are saying there is more than what the Prime Minister and the premiers have said exists in section 35—in which they said that basically nothing existed—and are saying that, yes, there are treaty rights and aboriginal rights in there, then I think we can utilize that kind of process now to get some firm commitments and guarantees that we are going to do something within the province and also with the federal government.

I think Ontario has a very strong voice in being able to keep the Meech Lake discussions from falling apart. If they can utilize that voice again to understand that we need participation in the process dealing with the Canada clause, we need participation dealing with Senate reform—because the commission only calls for that to reflect the duality of Canada and to report back to the federal and provincial governments. Yet it says somewhere in there that it needs to deal with the needs of the aboriginal people. Those are too vague. Those things are much too vague for us to say, "Yes, we would be satisfied if this process were to continue under these conditions." I think we need a lot more than that.

The Chair: Thank you very much. Unfortunately, the half hour has gone by very quickly. I would like to thank you very much for appearing here this afternoon on very short notice. I am sure the committee will take your remarks to heart, and hopefully some good will come of it.

1610

MICHAEL DEAN

The Chair: Our next presenter is Michael Dean. We have allowed 20 minutes for your presentation. We would appreciate it if you could make a brief opening statement and allow some time for questions.

Mr Dean: My statement will not last more than 10 minutes.

My name is Michael Dean. I am a small businessman. I believe I can safely say that I am speaking on behalf of at least 80% of the people I know; that is, my friends, family, fellow workers, customers, suppliers, competitors, trade associates, et al. We want to see this internal strife and bickering ended, once and for all. We wish to see Canada united, but we do not want peace at any price. Like most Canadians, we are very concerned about the Mulroney and Peterson governments' approach to and handling of the Meech Lake accord. The Meech Lake accord should not be ratified as is.

For every nation, there comes a time when its people must stand up and be counted, a time when the people, not the politicians, must control the destiny of the nation. We are seeing a spectacular example of this in eastern Europe today. We say that we are a democracy, but a country is not a democracy simply because it gives the right to the people to elect representatives. These representatives must do the will of the people. The Meech Lake accord is just another attempt by politicians to impose their will upon the Canadian people, an example of politicians asserting themselves as masters and not as servants of the people.

Messrs Mulroney and Peterson appear unsympathetic and even hostile to anyone who does not want to give Quebec "distinct society" status within Canada. As a father, you cannot grant special status to any of your children or you are going to have family problems on your hands. As an employer, you cannot give distinct or special status to any one of your employees or you will have labour problems on your hands. Nor can we give "distinct society" status to Quebec. The Parti québécois has already spelled out that if Meech Lake passes, it will not be the end of the saga, it will only be the beginning and more demands will be made, and more demands after that.

If any group deserves "distinct society" status, it is our native Indians who for years have been underprivileged, abused and ignored by too many of us. Once again, they have been ignored in the Meech Lake accord.

I came to Canada 23 years ago, and during this time I have seen almost constant friction between French and English Canada over language, government contracts or just power plays. You cannot have two masters. Double authority and peace do not go together. The two will always be in conflict. When the issue of ultimate authority is not clear and singular, there will always be unrest and instability. Duality divides, language divides, division weakens. We must unite at all costs.

During recent years there has been a pronounced imposition of the French language into our daily lives. For example, most official documents that cross my desk are bilingual and most government agencies answer their phones in French. This artificially created need for the French language has cost taxpayers a fortune and it looks as if it will cost us much more in the future, at a time when we should be exercising fiscal restraint.

All this has caused annoyance which later became resentment. The passing of Bill 178 in Quebec was like an act of separation. English-speaking Canadians are being told to be bilingual while French-Canadians are legislating French only—truly a double standard. All this has created language discrimination, and as a result an élite class is emerging. For example, in order to have a high position in government or politics you must be French or speak French fluently. This automatically eliminates 85% of English-speaking Canadians from ever achieving high public office.

We must say enough to all this nonsense. We have seen how our politicians have handled the Meech Lake affair, and it was the best example I have ever seen of how not to run a country.

The Charest committee appeared to resent anyone who was against the accord. The meetings last week were conducted in an atmosphere of duress and panic, which is not conducive to productivity.

Mr Wells and Mr Filmon both said they were being constantly told that if they did not sign then the country would break up, or, "Sign now and we will fix it later." Consequently, Quebec yielded nothing yet almost everyone else yielded something. Even our own Premier offered four senators—maybe more, who knows? It was all conducted in secret behind an army of lawyers. If I ran my business like that, I would be a laughing stock and bankrupt.

Let's aim for one united country, one united government, one official language and one united people.

Finally, the Meech Lake accord must not be ratified until a referendum of the people of Canada has determined the will of the people of Canada, for this indeed is a vital moment in the development of Canada as a nation.

Mr Allen: I appreciate that Mr Dean has come forward on very short notice, as everybody else has, I am afraid, with this pattern of hearings, to present his views on this matter to us.

I guess I would want to clarify a couple of points he made. The first one was that it is time to have this matter done with once and for all. I am not quite sure what he means by that. I set the remark against a background of the history of this country, in which there has been a couple of centuries of dialogue, discussion, sometimes more intense than others, and periodic constitutional changes in order to make accommodations between various groups, not just between French and English but others as well, other regions of the country. I am not sure whether you are suggesting that we somehow contemplate a future where there will be no dialogue or no partners to dialogue with or exactly what you meant by that statement. Could you clarify that for me?

Mr Dean: We seem to have been in friction for so long over sometimes almost the same issues. The Meech Lake accord seems to have brought a lot of this to a head. This is a fine opportunity—it is probably the best opportunity—for Canadians, for the first time, to hold a referendum and let Canadians, the people, make the decision over Meech Lake. Are we going to have it continue with a distinct society or are we going to aim for one country?

Mr Allen: I am reading between the lines. I am assuming you are suggesting something of the order of a referendum.

Mr Dean: Yes, I did specify a referendum.

1620

Mr Allen: Could I then ask you what you would anticipate the consequences of the referendum to be? Not just in terms of how many people voted yes and how many voted no. Let us assume that the overwhelming majority even voted against the Meech Lake accord. What consequences would you anticipate would follow from that?

Mr Dean: I agree with the previous gentleman. I do not think the country would fall apart. Being an immigrant myself, our main worries over the last 20 years have been economic as opposed to political. Even if the Meech Lake accord were rejected after the referendum, I do not think the country would fall apart; I think it would remain strong and get stronger. But at least we would all know exactly where we stood.

Mr Allen: I guess the majority of the population in Quebec would say that it now knows where it stands and, one way or another, would find little ground of confidence to participate further in national affairs, whether it did that formally or informally, by an act of separation or by simply withdrawing itself from discussion, which would be a de facto act of separation. Would you imagine it possible for the nation to continue on that basis in any constructive fashion at all?

Mr Dean: If it is the will of the people of Quebec to separate from the rest of Canada, they should be allowed to do so. We have seen similar examples in eastern Europe recently. If the people of Quebec want it, that is what they should be allowed to do. Be it good or bad for them, it should be and is their decision.

Mr Allen: That has always been the position of my party as well. We have always said that where a people have that intention, that desire, and it is overwhelming, that is legitimate, just as we consider it is legitimate with regard to the east European regimes—Lithuania, Latvia, Estonia.

I guess the final part of this question is, why would we want to force the issue to that extent when there are countries—like Belgium, Switzerland and any number of other countries—that have not only two but sometimes several language groups and often with certain intensity, even, of nationalistic feelings attached to them, yet they manage their affairs? Switzerland has several language groups and has an ongoing discussion of constitutional affairs as a matter of course. The debate goes on and the country stays together and remains relatively prosperous. Is that not a legitimate model when one has, in your words, more than one master, in a sense, as far as language goes, but one manages to accommodate?

Mr Dean: Belgium seems to have worked it out very well, but I have seen little evidence here that we have worked it out well. There seems to be constant friction, as I mentioned before. The time has come to a head now to try to resolve that situation once and for all, and I think Meech Lake is the vehicle to do that.

Mr Epp: I appreciate your being here today. I have just a few questions.

You used the analogy of the family. I will just continue very briefly on Mr Allen's question. Since you used the analogy of the family, do you not think it incumbent on the parents, in this case the leaders, to try to keep the family together rather than to try to bring division to the country and bring it apart? As a parent, would you not think you should try to keep the family together, or would you say, "Look, once and for all, you're going to do what I say and I'm going to have a dictatorship and that's it"?

Mr Dean: Of course, and I think every attempt has been made to do that and we should continue to try to do that. But if you have one member of the family who is adamant about leaving or being different, you must do something about that member of the family. You have to make a decision, are we going to keep him here against his will or are we going to let him go? As a father, it would be your decision to say yea or nay.

Mr Epp: You do not think that you should maybe become a little more moderate and change the playing field a little to accommodate children who, to use your analogy, might not all be the same, exactly the way you envisioned them?

Mr Dean: I think we should do everything in our power to keep that unity and go as far as we can with it. If the time comes when you realize you are fighting an impossible battle at the expense of the economy or the family income and the unity of the family, then you have to do something about it.

Mr Epp: I have just one other question. Earlier you used the analogy of the family too and that somebody has to be supreme. You are married and you have children?

Mr Dean: Yes.

Mr Epp: Are you and your wife equal?

Mr Dean: I guess as equal as any other husband and wife, I would imagine.

The Chair: Thank you very much, Mr Dean. We appreciate your taking the time to come up, particularly on very short notice. We appreciated hearing from you.

BRUCE WOOD

The Chair: Our next presenter will be Bruce Wood. We have allowed 20 minutes for your presentation. I see you have a written presentation, which we have. I hope you will allow some time for questions. Proceed when you are ready.

Mr Wood: First of all, I want to comment that I find this process not only a surprise but also somewhat intimidating. Although I should not have to, I feel the need to apologize for the fact that I represent only myself. I think that is worth while, however.

Mr Polsinelli: You do not have to do that. You should feel proud of yourself.

Mr Wood: I also feel the need to qualify why I am here through the preamble that I put on the first page. The purpose of that is because I believe it is important for me to distinguish myself from those who have opposed the Meech Lake accord and will oppose the companion agreement because of anti-French or anti-Québécois sentiment. I am neither.

My name is Bruce Wood. I am currently an Ontario resident. By profession I am a psychotherapist. I have lived in several provinces of Canada. I grew up in Quebec outside Montreal and attended college and university in Winnipeg. I have an understanding of Quebec and French culture that comes from living and growing up within it.

In 1986 I organized and ran a campaign for the position of mayor of the city of Winnipeg. The campaign was organized to satirize the anti-French sentiment rearing its head in Manitoba and the referendum on minority language rights that had taken place in Winnipeg around that time. This satirical candidate's name was Bill Ingual and he came in fourth on a list of 10 candidates for mayor. I am not anti-Québécois or anti-French, and I am very disturbed by the Meech Lake accord and the companion agreement.

I come before you today without any illusions about how interested the government of Ontario might be regarding public input into this latest constitutional agreement. I see this process as lipservice to the concept of democratic government. Your minds are made up, all three parties in the Legislature are compromised and the likelihood of anything I might say having an impact on you is very small indeed, I believe.

But I want you to hear clearly and loudly my frustration and the frustration of others who are determined enough to speak to your committee. I am outraged, amazed and embarrassed for all of us that this latest shameful episode in the development of the Canadian Constitution has been allowed to go through without any real opposition from our so-called political leaders.

Unfortunately, the members of this committee have been designated to function as the recipients for this anger and frustration while the real culprits, the Premier and his fellow first ministers, parade across the headlines patting one another on the back. I believe that in what I have to say and in how I feel about these issues I am not alone. I also do not believe that the end justifies the means, and elected officials in Canada are about to receive a lesson in democracy next time they—you—submit yourselves for public approval at the ballot box.

1630

My principal concerns regarding the recently negotiated constitutional agreement in Ottawa this last week are focused in two areas. The first is the substance of this agreement and what it means to me as a Canadian citizen, and the second is my concern as a human being for the manner in which the agreement was reached.

First, I would like to comment upon the substance of the agreement which was drafted to facilitate the passage of the Meech Lake constitutional accord of 1987. I believe that most of you are by now familiar with the substance of the arguments directed towards the original accord by those of us who are not anti-Québécois or anti-francophone. I share many of those concerns which have been articulated by others.

It may be hard for you to understand, but there truly are many, many Canadians who do not support the watering down of the powers of the federal government of Canada. It may be equally difficult to understand that there are those of us who support the endorsement of Quebec as a distinct society yet cannot endorse the need for similar rights and powers for the nine other provinces.

I guess these things are hard to understand because those who would support the Meech Lake accord and its recent companion agreement can only see red when they hear these positions, that red being the maple leaf in the flag that is waved so vigorously to obfuscate and confuse the debate.

The companion agreement, which I assume this committee has been created to examine, is a joke. Full of commissions and promises to investigate things which have already been examined, it is a classic example of the sleight of hand practised for years through royal commissions and judicial inquiries. For example, the provision to ensure that aboriginal peoples will be discussed at least every three years at constitutional meetings has no meaning. Surely even the most partisan among you must blush at this blatant attempt to push aside this community which has been pushed aside so many times.

Racism does not require regular discussion, poverty and oppression do not need room at the table in Ottawa and disfranchisement is not answered through political sideshows on The National and The Journal. Canada's native people require action, and as a white person I am prepared to give up privilege so that this may happen. I am not interested in hearing the Premier of this province along with the others pat themselves on the back every three years for what a nice thing it is they are doing. This section of the companion agreement is meaningless.

Senate reform in Canada will take place or central Canada will be looking at a separatist movement of equal seriousness to the one in Quebec. I do not believe that a five-year study of an issue of such importance is a serious response to this issue. A group of men who believe that they can draft an unimpeachable document which responds to Quebec's five demands overnight in Ottawa in 1987 must surely be capable of resolving this

problem more quickly. Or is it a matter of priorities? Senate reform is not an issue of priority of Ontario and Quebec and so it must require the serious sober thought of a five-year investigation.

The Meech Lake accord has set up the expectation that the Constitution can be negotiated piecemeal with different interest groups and regions threatening the country that they will have their round or the country will break apart. This tactic is likely to be used by the west to pressure Senate reform. The use of greed and unprincipled pressure to achieve this latest agreement will return to haunt those who began this process. As a Canadian, I fear the precedents set this last week.

I am no constitutional expert, nor am I a lawyer or a political mandarin, but I do not hold my opinions and feelings in isolation. I do not really know much about the political views of the Premier of Newfoundland and I am likely to disagree with him on many things. However, regarding the events surrounding the Meech Lake accord, I believe he has acted with dignity and with principle and I am saddened by the absence of any real courage demonstrated by politicians in Ontario.

It is normal for provincial premiers and politicians to advocate for their provinces and to struggle with the federal government for greater rights and powers to, in their minds, better represent the people of their provinces. This struggle works particularly well when there is a federal government to struggle with. Currently, in my opinion, we have a federal government which is interested in divesting itself of all power to private industry, the United States or the provinces. It is within this context that Clyde Wells is celebrated as a hero by some. Under normal circumstances, he would not stand out, but as the sole advocate for a strong central government, he shines.

Obviously, I am quite a cynic when it comes to politicians in Canada. I do not trust what politicians say—there are exceptions—and I do not like the way in which they attempt to manipulate myself and the media. I suspect that many politicians begin with somewhat honourable ideals and then compromise themselves to attain or maintain their positions of power. In spite of this cynicism and pessimism, I am dumfounded by the behaviour of the Prime Minister and the premiers last week in Ottawa. I and other Canadians witnessed a spectacle of antidemocratic decision-making that, should it transpire in another country, would be cause for censure in the Canadian media. In some nations, impeachment procedures would begin, while in others, thousands would demand the resignation of the government. In Canada, we have hearings intended to rubber-stamp decisions made by 11 white men locked in a room all week.

Professionally, I am a clinical therapist and I have specialized in the field of male abuse for years, pioneering programs in western Canada and northern Ontario. I have studied the ways in which men physically and psychologically abuse women and children. I am also familiar professionally and personally with the techniques used by men to bully other males to achieve whatever they need to accomplish. It is my understanding that one of the reasons for the widespread existence of abuse is the continuing endorsement of controlling, manipulating and threatening behaviour by the powerful men in our society. These role models include movie heros, sports stars and politicians, all of those with power and wealth. I hope that I am not seen as trivializing issues like wife abuse when I suggest that what transpired last week in the National Conference Centre was an abusive process. What the young people of Canada have learned first and foremost from these meetings is that it is acceptable to do whatever is necessary to accomplish a goal. This both saddens and sickens me.

It is not laudable or laughable to create a process where a few individuals are ganged up on psychologically, accused of causing dire consequences, physically prevented from leaving the room, taken to the limits of their endurance, pouted at, yelled at, listened in on, vilified, lied about in public and then occasionally praised, cajoled and wined and dined as though they were members of the club. In all seriousness, these actions are all part of a comprehensive listing of torture techniques published by Amnesty International in 1986. The final culmination of this abusive process sees the abuser turning the tables and announcing that he was right all along, with the agreement of the worn-down victims.

I, for one, do not celebrate the victory or the process of last week. I am ashamed for these politicians, I am ashamed for the country, I am ashamed for the media, particularly the CBC, and I am ashamed for men. It is sad to note that after all this time we males have learned no better way of resolving our disputes or feeding our fragile egos than through bullying others. I suggest that we are a nation and a gender in need of psychotherapy.

My recommendations for this committee, should it be interested in anything other than rubber-stamping the decisions made last week in Ottawa, are the following: that the companion agreement which is intended to accompany the Meech Lake accord be dismissed as not worth the paper it is written on. With the possible exception of the agreement to strengthen gender equality, whatever that means, it is a document of no worth other than as a historical curiosity. I also recommend that this committee make real efforts to hear what the people of Ontario think and feel about this whole mess and that you be prepared to act upon what you hear.

Finally, I recommend that a procedure be introduced into the Constitution of Canada, through the government of Ontario, that would allow for the impeachment of politicians during their term of office.

In my opinion, native people, women, Newfoundlanders, working people, the disfranchised, northerners, electors across Canada and I will not forget what the Premier of Ontario participated in last week, and it will not be permitted again.

1640

Ms Oddie Munro: Thank you very much for appearing before the committee. I wonder if you could outline for me, given your set of recommendations and your feelings about the process, what would be an appropriate, acceptable or fair process that would take into account the diversity of the country as we look at constitutional reform and try to engage the public in meaningful participation.

Mr Wood: A few years ago I would have suggested that referendum was a democratic way of proceeding to incorporate public input into political decisions. The experience that I went through in Winnipeg when minority language rights were submitted to a vote by the majority was disillusioning and disappointing. I would prefer, given the way our political system is structured currently, that meetings not unlike this take place, but that they take place prior to the making of decisions rather than after the fact.

Mr Wildman: Thank you for your very sincere presentation, despite your feelings about politicians—and I take them seriously. You will know that as a committee we have been given the task by the Legislature of ratifying the agreement

reached in Ottawa on 9 June by next Wednesday. It is indeed after the fact, and it also is such a short time frame that it will be very difficult for us to seek a wide variety of opinion from the people of Ontario. We are told that the agreement in Ottawa will lead to a new process for dealing with constitutional change that will avoid the kind of situation that we are now in.

Do you think the proposal for a commission, for instance, that would be representative of all provinces and the federal government that would travel over a period of five years throughout Canada to seek opinion on Senate reform, for instance, is a model that might be better used? That is the first question, and I have one short supplementary.

Mr Wood: I do not oppose—in fact, I support—the idea of public input through commissions and hearings. As I said in my brief, I think five years is too lengthy a process. I was somewhat satirical when I wrote, but I think that decisions of greater import perhaps have been made in a much shorter period of time, and I do not understand why five years is necessary. But I do support the idea of listening to us.

Mr Wildman: That is novel, democratic, is it not?

The other short question I have is, you are aware that this Legislature has indeed ratified the Meech Lake accord, so we do not have to meet a deadline, legally at least, of next week and we could take a longer time to discuss the add-ons that were proposed in Ottawa, if the majority in the House wished us to do that.

Mr Wood: I strongly encourage you to do so. I believe the short time constraints placed on this committee are a continuing part of the process of placing pressure upon the dissident provinces.

Mr Allen: I found it a very reflective and well-written brief, and it certainly hit the issues very hard. I appreciated all that. I guess as a politician I find it a bit difficult looking at our future and seeing so much dismay about us out there in your mind and others' minds. But I recognize a lot of the reasons for that.

Central to all this—not asking you to shut your eyes or hold your nose or do anything like that with respect to the process, which we all think was terrible—I wonder whether you believe that Quebec back at the table at least offers an opportunity for us to make a bit of a new beginning, both on process and on substance on outstanding issues, given that there now seems to be some evidence of a fairly universal belief that the process was bad and that we need to find a very good and substantial public process to put in place. The first steps appear at least to be being taken in that regard. Is that much of a result of some value to you?

Mr Wood: It is of some value to me. I understood I was not to address the Meech Lake accord itself today, but I will say that I am quite sympathetic to the five demands of Quebec and the acceptance of those by the remainder of Canada. It is not my objection to the Meech Lake accord, so I welcome Quebec's voluntary inclusion in the Constitution.

As to the soul-searching by all politicians at this point about the process of last week, I hope you do not find me insulting when I say it should have been said last week.

Mr Allen: Without any disrespect to the presenter, I would only remind him that the report of this committee, two and a half years ago, had some very strong language in some of its first pages about the process. We did find it thoroughly distasteful and tried to use the hearings not just as a means of discussing the technically narrow thing known as the Meech Lake accord but to provide an opportunity to examine the whole range of constitutional questions that were outstanding in the Ontario public's mind and to try to address them as a whole in relationship to the Meech Lake accord. We did in fact view the requirement that the country address formally, in some at least parallel accord fashion, those outstanding issues, while we tried to make headway on whatever the issue was central to the Meech Lake accord. So at least you are before a committee that did recognize that and did say so.

Mr Wood: I am aware of that. I would have preferred that the Premier had been reminded of that last week when he was engaged in the process.

Mr Allen: Yes. My final question though—that last one was really a commentary—really is, I have a sense from your statement that you felt that somehow it would have been possible for us to do the Meech Lake thing without, for example, including the references to the Senate, as though somehow the west or Newfoundland or other provinces that were interested in Senate reform had no well-grounded agenda that was important to be addressed around the balance of representation in that body because that was part of the accord. I thought I heard you say that it was greed and unprincipled pressure from the west that brought the Senate into the Meech Lake accord. Perhaps I misunderstood you.

Mr Wood: It is probably my bad grammar. What I am concerned about is that the same kind of, I believe, unprincipled pressure and some of the motivation of greed will be used by the west in now pressuring for changes for the Senate, that the tactics that were used to achieve the accord last week will be incorporated and utilized by western Canadian politicians in achieving what they want. I would understand if they did that completely. I expect in three to five years to see them suggesting that we have another crisis in Canada because of the failure to resolve the Senate.

Mr Allen: I think that is a fair warning.

The Chair: Thank you very much, Mr Wood. We appreciate your comments, particularly with such short notice. Thank you for your presentation.

1650

CECIL REID

The Chair: Our next presenter is Cecil Reid.

Welcome, Mr Reid. If you were here earlier, you heard that we are allowing 20 minutes for your combined presentation and questions, so if you have an opening statement, we would like to hear it and hope you will leave time for questions.

Mr Reid: Thank you. My concern is primarily around the legal aspects of the Meech Lake accord and the companion resolution. I have a brief opening statement here and I hope to obtain from this committee some answers, so be that as it may.

I appreciate this opportunity to appear before this committee. On behalf of Canada, myself and my family, I have a few questions I am unable to obtain answers to. To open, I would like to inform you that I am not a total stranger to the province of Quebec.

While I was employed by the CNR, I worked in Quebec from September 1954 through late December 1954. At that time I was in charge of a CNR work train crew and also in charge of nine power tool maintainers, none of whom was bilingual. We

were stationed at St Leonard's Junction, approximately 100 miles east of Montreal. I will not dwell upon the problems we encountered in the beginning as the local railway employees felt we were taking away their jobs with machines until I convinced them it was a lot easier for the machines to do the jobs, following which the CNR has French operators throughout Canada.

In addition, I visited Expo 67 in Montreal, not once or twice, but three times—my wife and family first, my wife and I alone, and with my wife and next-door neighbour, who were born and raised in Quebec. We had a good time.

Now, down to the serious concerns about the Meech Lake accord and the agreement now agreed to by Premier Peterson, who failed to hold a referendum. Why would Mr Peterson overstep his mandate, and on whose behalf? Most certainly not the majority of the people of Ontario, including the French people who have migrated to Ontario from Quebec.

My father-in-law, who is a veteran of the Second World War, French and a volunteer, states, "If Quebec wants to separate, let them," but doubts if they will. "Better they separate now, if they want to." As the separatist leader of Quebec, the opposition leader Mr Parizeau, says: "Meech Lake. 23 June 1990. The war begins 16 July 1990." I would like to point out here that he is the first person I have heard mention the word "war." For once, I agree with him.

If the Meech Lake accord is ratified—and I repeat, if; it is not ratified yet, it is not law—under the present agreement, my questions will be as follows: Will all Canadians be treated equally under the law? If not, why not? What law will prevail, the civil law of Quebec or the common law of the other nine provinces and the territories? I would like to know the answers to those, and I am sure a lot of other Canadians would too.

I would like to hear Mr Peterson explain how one country can have two separate laws and all the people be treated equally under the law. Also, I would like to point out that the truth is that mistakes made by politicians in constitutions are usually corrected by blood, guts and tears. At least, that is what is happening around the world.

In addition, I would also ask one further question. If a Quebecker violates our laws in Ontario or any other province, under what law will he or she be prosecuted? Will he or she be given special consideration as a member of a Quebec distinct society and not subject to the common law of the rest of Canada?

Mr Peterson should call a referendum on the entire matter, or does the agreement answer my questions and concerns?

I forgot one thing. I arranged to have photocopies of write-ups in the newspapers and I am sure that the secretary there has supplied each one of you with copies.

The Chair: We have all been copied with those.

Mr Reid: You all have a copy so we will not go into detail on them. I am interested in the answers to my questions, if you have any.

The Chair: I do not know whether any of us are in a position where we can answer those questions particularly. We are here to listen to you as opposed, and then make a recommendation to the House.

Miss Roberts: I suggest to you, sir, that the questions you have asked can be answered very easily by any lawyer you wish to go and speak to. It is not the position of this committee to give you legal advice with respect to that. I can assure you from the questions you have put forward that the Meech Lake accord does not in any way change the answers to any of those questions. That is my opinion, but it is only my opinion as one person. Those are legal questions that any lawyer would give you an answer to.

Mr Reid: The problem is that we talk about nation-building. How do you build a nation with two separate laws?

Miss Roberts: The way they do it in the United States. They have two separate laws. California has a civil code, just the same way Quebec does. So it happens and the United States is an experiment in some type of government and seems to have worked to a certain extent.

The Chair: It should be addressed.

Mr Wildman: I am not a lawyer so perhaps I can answer the questions. Historically, since the Quebec Act was passed by the British Parliament, there has been the preservation of the French civil code and it has had precedence in Quebec. A citizen of Quebec or another person in Quebec who is brought before the civil courts is subject to the civil code in Quebec. If that individual lives in Quebec, but then comes to Ontario and is brought before the courts, then the common law of Ontario would be the law under which that court would act. The criminal law is the same across the country. There is no difference. The Criminal Code is a federal law and all citizens of Canada are subject to the Criminal Code no matter where they are charged in the country.

Mr Polsinelli: I would like to add to that a little bit. I think what Mr Wildman has said is absolutely correct, but Mr Reid will know that when this country was formed in 1867 the Fathers of Confederation decided that the legislative authority, the powers to make laws between the federal government and the provincial governments under section 91 and section 92 of the British North America Act, which is our Constitution, are powers to make laws that are applicable throughout all of Canada, as Mr Wildman indicated. The Criminal Code is a prime example of that. The Criminal Code is applicable throughout every province in Canada, including Quebec, British Columbia, the eastern provinces and the Northwest Territories.

The other powers that were given to the provinces to make laws are different in each province. The provincial legislation that this Legislature enacts is law only in Ontario. The provincial legislation that the Quebec Legislature enacts is law only in Quebec. The Newfoundland Legislature will enact laws for that province. If we look at the legislative bodies in this country, there is the federal government situated in Ottawa, which makes laws for all of Canada, there are 10 provincial legislatures, which make laws for those various provinces, and there are two territories, each of which has something similar to a legislature that makes laws for the territories. So, in effect, in Canada, what we have are 13 bodies making laws.

Mr Reid: Maybe that is the problem.

1700

The Chair: Mr Reid, does that clarify things for you or does it create more problems?

Mr Reid: Not really, since as far as I know, hopefully, Meech Lake will fail and we will go back to the drafting board again where we will do it right. We will do it with open public hearings. What is the matter with starting again? Are you going to buy a car today from me, a used car dealer, and I will give

you the guarantee next week? No. You are not going to buy a car without an engine or the wheels. The problem with the whole setup is that it is all trust—maybe. I do not think the people of Ontario or across Canada are prepared to trust Quebec any further.

The Chair: Thank you very much for taking the time to come here, particularly on short notice. We appreciate hearing from you.

DON CLAPPISON

The Chair: There is a change on the agenda for the next presenter. We have Don Clappison. Welcome, Mr Clappison. We have allowed 20 minutes for your presentation. We hope you will give us a short introduction and then allow some time for questions.

Mr Clappison: Yes, I would likewise like to because of the short notice that I had. I think you can appreciate at 11 o'clock in the morning finding that you are coming here at 5 o'clock does not leave you very much time to spin the wheels in your brain. I ask your indulgence not to take the severity of my comments without hearing their full context, because I think you will lose a great deal of the force that I have.

I happen to be an individual who has followed a great deal of talk shows after retiring from the school board. I have found that in the talk shows from coast to coast you get a mixture of the nuts, the bolts and some very clever people. One of the most informative programs of all is no longer with us, and that is Pat Burns for CKO in Vancouver. That man had a handle on the Quebec situation that people have ignored right from the top to the bottom and, unfortunately, some of the things that he predicted have come true. I will read, first of all, what I was able to work out on my computer, one page, and then I would like to comment orally and give you an opportunity to ask some questions.

Being given less than three hours to prepare this brief, I have been faced with the agony of risking personal embarrassment or failing to speak up for the citizens of my country. As a responsible Canadian, I have chosen the former option. I am here to speak on behalf of the ordinary citizen of Canada, even though I personally recognize these hearings as window dressing after the fact, made even more obvious by their construction yesterday with a deadline of next Wednesday expressed today.

There are three issues in the current constitutional convulsions of the past week, namely, process, substance and political morality. There have been three years for a proper, just and open process to evolve with adequate leadership, three years in which the political servants of this country could have approached the Meech Lake issue with national dignity, openness, trust and consultation.

I am overwhelmed by the alleged admission of the Prime Minister that the constitutional conference of the past week was intentionally delayed to influence the result. I find the perception of that interview offensive and arrogant. No objective or end could ever justify the painful televised performance inflicted on Canadians this past week, and that includes Watergate and the McCarthy hearings.

The spectacle of pro-Meech premiers and the Prime Minister playing the role of exaggerating spin doctors every lunch hour greatly eroded whatever respect and trust Canadians still have in their politicians and in their political system. That is one of the greatest tragedies of this unacceptable exercise. A process that could have been reasonable and healed the nation became a facsimile of the TV show Let's Make a Deal. The sad part for Canada is the fact that there are no prizes.

The nation has not been united by this shameful conference. Its inherent manipulation has confused the nation, hardened divisions, produced mistrust of politicians and ourselves, betrayed neglected groups such as our native people, created perceptions instead of substance, generated no changes to make all Canadians equal, destroyed confidence in government and bred public cynicism of politicians. To borrow a baseball phrase, even though the fat lady has not sung, the healing of which the Prime Minister speaks will have to be achieved by another head of state, and only history will decide on the validity of the statesmanlike posture of Ontario's leader beyond the next election.

We must as a people return to a form of administration in which the government and its politicians see themselves as servants and not as masters of the people. I realize that is plain talk, but this is the way the people of Canada feel. I am afraid that if some of the federal cabinet ministers and some of their provincial counterparts would get out of their air-conditioned limousines and sit on the sidewalk, this is what they would hear from their people.

The torrent of radio shows yesterday and Monday was abominable. They were not crackpots; they were people who were concerned. They were people who wanted an answer to this question, "How can Mr Peterson and the Prime Minister address the issue of the distinct society as being some kind of distinctive honour that we give boy scouts—nothing to it?" Yet Mr Bourassa, in an interview on The Journal, comes out and says, "The bill of rights will never override the power of the distinct society." That is a quote I heard on The Journal. These are sobering thoughts.

What has been accomplished over this exercise? The only thing is that people have become angry. They have focused like they have never focused before. I am a mild person. Step in my path and I might give you a kick in the shins. But what I have seen in the last little while is a nation that has been shafted and deceived.

To give an example, I wrote to the Premier of Newfoundland last night. As a loyal Canadian, I sat at my computer until 2:30 this morning addressing a personal letter on each computer. I have a slow Radio Shack, 200 words a minute, and it takes a long time for a two-page letter to come up. I listed the perils of this accord. It is nothing but a glitzy showcase. It proves nothing, it settles nothing, it promises nothing, and we will soon find that it delivers nothing.

I expect you to come at me hard, but I worked hard for the pension I got. I started with the school board late. It takes a lot of grace to see politicians in my own province, where there is a minority—I believe we have to do things for the French people in our province, but I have seen a minority expecting people to pay federally $1.7 million a day for bilingualism programs.

If there are areas where there is a problem and there is a justifiable ratio of people who need that service, fine. But I think the Premier of Ontario has been pushing people around on this one issue. I do not think anybody in this room could put a human tag on what $1.7 million means to an individual. It means this: $1.7 million a day spent on a bilingual service where it is not maybe needed constitutes the lifetime earnings, the total 100% lifetime earnings of a person 21 to 65 years of age earning $36,600. That is what $1.7 million a day means when it is put into those terms.

But a politician gets hold of that and he says, "That is only seven cents a day." That is not the accurate way you do it,

because if you have an auditor come to your house or your business and he tells you that your economy is defunct and you say, "Well I saved two cents on these oranges," you will see the response you get. That is where the people are at. They are angry and I have never seen them as angry in my lifetime.

1710

There is one thing that I would like to close with. When I was 19 years of age, just before I got my draft call, I saw the soldiers leaving the north Toronto station on trains for the coast to board ships that never came back. I lost friends in airplane crashes. I lost buddies. When I volunteered myself, because of a rheumatic heart condition, I was refused for active service, but I volunteered.

I want to say this much. The display and the circus that we put on for the Canadian people last week was shameful, disgustingly shameful. To have a Prime Minister stand on the sidewalk and say: "Well, I don't know. It might have been one of those 200 lawyers or it might have been some of the clerks up there"—blaming the secretaries for the possibility of a missing paragraph that meant so much to the Premier of Newfoundland—"but it will be straightened up in a matter of a few times when we get it back on the table." It never got on the table. I sat for three hours waiting for that thing to turn up. It never turned up. Instead, there was disagreement.

I think the buck stops here. This is the first experience I have ever had in my lifetime where I have had an opportunity to appear before a committee, but I want to say this: You people and the Prime Minister have an awful burden ahead of you to bring in a fairness and a justness that is not in this agreement.

Mr Mahoney: I certainly agree with that last statement, that we have an awful burden ahead of us, for a number of reasons.

Just for clarification—I do not want to put words in your mouth so I would like you to clarify it—I thought I heard you say that where French-language services were required, that was fine with you. Is that what I understood you to say?

Mr Clappison: I will qualify that a little bit, because what is a requirement? You know what I mean, where it is required. If there is a rule, fine. But one thing that Pat Burns had on his program one night was a school up in northern British Columbia. There were 17 children who came from French families and they were expecting a $5-million school in that little tiny community.

I have nothing against the French language. I can read it better than I can speak it. I had a deaf French teacher at Upper Canada College, so you can imagine how much oral I learned. I have no quarrel with the French people, but I have with the politicians who are just digging in their heels. We are caving in and giving them everything and they are responding with nothing, including a flag in their legislative assembly now that they are back.

Mr Mahoney: With respect, I just want to understand. Bill 8, which is the provincial legislation that deals with the provision of French-language services in provincial services—not municipal, but provincial services—states that if a community has 5,000 francophone people, they should be able to receive French-language services in French. I am not talking about 17 people requiring—

Mr Clappison: Are you talking about government services?

Mr Mahoney: I am talking about provincial government services for 5,000 people. Would you think that that is fair?

Mr Clappison: I have never really thought about the numbers game. I have only accepted the concept that there has to be some accommodation of people with other languages. My wife happens to speak Greek, but she was not from the founding nations and I accept that part of it. But what I am really objecting to today is the fact that the distinct society has behind it an unknown pricetag and everybody, including the Prime Minister, is trying to make it look like 10 cents.

Mr Wildman: I agree with your concern about the process that we have gone through for the last three years and particularly what happened last week. I just want to be certain that I am understanding you. You are aware that this Legislature ratified the Meech Lake accord some time ago?

Mr Clappison: That may well be, but that was before this conference.

Mr Wildman: Yes, but in terms of the date next week there are only three provinces that must decide whether or not to ratify the Meech Lake accord, the 1987 agreement. They are Newfoundland, Manitoba and New Brunswick. So in terms of Meech Lake, this process that we are currently involved in frankly is almost irrelevant.

Mr Clappison: That is why I felt that way when I made that opening remark, that it is a fait accompli as far as the province of Ontario is concerned and this was just a showcase, but I felt strongly enough on it to come down and let you people know what is out on the street. I do not think you know what is out on the street. I am very emphatic with that one. You just do not know the anger that is out on the street. If I were Mr Mulroney I would be looking for a job now. If I were any sitting member who put on that spectacle last week—I just hope none of my American friends saw it—I would be embarrassed.

I am also embarrassed at the glitzy way that Mr Peterson tried to take advantage of the situation and make himself an instant statesman. I did not see any statesmanship at that place at all. I heard people talking. I think a quote came from Mr Bourassa: "It's 95% of the people. It's a fait accompli." The pressure that was exerted on Mr Wells was something that this country should be absolutely and utterly ashamed of, along with Mr Peterson.

Mr Wildman: As I said to you, I agree with your point of view that the process was terrible and I would hope that we never go through that again. But I do want you to understand that in terms of Meech Lake and this province, as opposed to the agreement reached last week, this Legislature has already ratified the Meech Lake accord, some time ago.

Mr Clappison: That does not faze me. Frankly, I just hope, as the last gentleman said, that we start again because this process has divided the nation instead of doing the job that it was intended to do. It was intended to heal and bring us together, and boy, it has brought us the 4th of July in the middle of the week.

Ms Oddie Munro: I am just wondering what your suggestions would be to resolve individual differences. Every one of us is different. You are different from me, but we also have some similarities. When you take a look at the feelings that you observe out there, and when we talk about the process that we are trying to get a better handle on so we can measure it, what

would be some positive suggestions that you might have on looking at differences? Similarities I think we can all handle, but how would you resolve them?

1720

Mr Clappison: I think that is important, because the last thing I would want to do is leave this committee with the feeling that I had been a negative person without purpose or without anything positive to contribute. That is the last thing I would want to do. That is not the family tradition.

I believe that first of all it is going to take humility. I had been a Conservative all my life until 1984 and I swung over totally to vote for Mr Turner. All the canvassers that I worked for have done likewise. So I am not coming at this thing from an anti-Liberal position. I am coming at it from the standpoint that we have to do something instead of assessing blame on this person and that person. There have to be some people with grace and decency to admit that it was an awful show. I think the Canadian people are looking for somebody to say it was an awful show. We only had from the Prime Minister the thought, "We would not want to do it again." I mean, the author of the book is saying, "We do not want to write the book." Yet he is saying "we" collectively and diffusing the blame.

I think we have to have the leaders of the country recognize that it was a poor show. Then I think we have to have some humility and statesmen. We need a Jimmy Carter if necessary, a man who could pull the nation together out of love instead of opportunism. I believe that is basically where the healing is going to start. It is going to start with our leaders, how they respond. I think it is going to have to take humility. It is going to have to take real care. It is going to have to take real concern about the Joe Blow who is driving a taxi, like the man who got me here on time for this meeting. He lost a hub cap around Queen's Park and was very upset with me. I did not have enough money to pay for it. But I think we have to start with people on the street, that they are as important as all the academics and the lawyers whom we quote all the time as giving us the endorsement of which way we go.

We have to consult with people and if it takes local committees—but I think the basic part before that is that we rewrite the process. From my own position, I do not feel at all threatened. The only thing that threatens me about Quebec's leaving Canada if it got a "no" referendum would be the fact that people have built up their expectations and it is our fault. I think we should have been delivering some of those expectations instead of linking them politically with a process like this.

The Chair: Thank you very much for appearing before us today. I certainly appreciate it even more because you were only notified this morning and you did an excellent job.

JOHN NAGY

The Chair: Our next presenter is John Nagy. Mr Nagy, we have allowed 20 minutes for your presentation and for questions. I understand you have a written brief which has been circulated to the members. We would like you to leave some time for questions, so please begin.

Mr Nagy: Most certainly. My presentation to you today is not being made as a member of an interest group but simply as a naturalized Canadian citizen and resident of this province. If you would indulge me, I would like to skip certain sections of the introduction to get to the meat of my presentation. You all have it in front of you.

There are two things I would like to mention. I am here because I have very, very great concerns about the future of this nation as a people as well as for my country as a whole. Those concerns include everything that you have heard so far from all quarters, and at this juncture let me just interject that I am not here to criticize the way the meetings went and what activities took place in Ottawa. I certainly would like to have had them more public so I could have followed them more closely, which I did anyway with great interest. I am not here to criticize.

Hopefully, as a layman, and I have to stress that—I am not a lawyer, I am not up on constitutional law, as you well may imagine, so I am making this presentation as a layman and some of the finer legal points may be lost from my standpoint to a great extent. But fairness and unfairness, justice and injustice are not lost. I understand that when I see it. My concern was to offer what I perceive to be possible solutions or at least different contexts from which to take a look at the problems and which may eventually lead to a solution of those problems. I urge you to please look at this presentation in that light.

My first problem has always been the linguistic duality issue. It is probably close to a lot of your hearts as well as mine. My ethnic heritage and culture are very important to me and my retaining that ethnic heritage is important to the multicultural fabric of this nation and to the province of Ontario. However, that must include language as well. Those of you from diverse ethnic backgrounds will understand this.

I urge legislators to recognize the simple fact that the term "bilingual" does not mean French and English only. It also means, as in my case, Hungarian and English; Portuguese and English; Ukrainian and English; Italian and English; and a host of other variations, including other languages coupled with the French language. Being bilingual means nothing more than being able to speak two languages. No one has the right to decree that only French and English may be accepted as legally bilingual, either where the Constitution is concerned or, to my mind, where the province of Quebec is concerned for that matter.

I take offence when I hear statements about how the members of the francophone community are not being guaranteed their language rights outside of Quebec. To say something as misleading as that is just plain shameful. In our province, here in Ontario, francophone schools providing education in French for those who choose to attend those particular schools have been available for some time now. Our province has a policy in place to provide services in both languages as required. Our schools in the province of Ontario do not suspend students as a matter of policy because they speak French in the hallways and in the schoolyards. That is pursued only by Quebec in the province of Quebec. Now I see something definitely unfair with that. There is something definitely wrong.

I do not see it as morally acceptable to the Canadian people that Quebec demands that we practise linguistic duality based on French and English, while not only do they refuse to do likewise in the province of Quebec but actually forbid it or punish individuals who comply with that. Linguistic duality should be practised in communities with some francophone population, certainly. But it should be done as a courtesy measure, making that segment of the population welcome in our midst, and for no other particular reason. Any anti-francophone sentiment in existence today is of Quebec's own making. Their demanding attitudes only fuel and exacerbate those sentiments further.

I firmly believe that the multicultural nature of Canada as a nation demands that the preamble to the Constitution of Canada

be amended to read "multilingual nation with two official languages." I think therein lies a solution, because if we do that we are lending constitutional credibility and recognition to all other languages being spoken in conjunction with either the French language or the English language in Canada today. It would be a good start in recognizing that Quebec is not the only province with language rights, but that all other provinces and territories have rights also, where the application of bilingualism is concerned particularly. This issue must be kept as a two-way street, constitutionally protected, supported and enforced as necessary.

The second major item that I would like to put forth to you is dealing with the "distinct society" clause and the Canada clause. Obviously these two issues must be successfully resolved. Certainly some creative thinking is required, but sometimes examining a problem in a context that is different from the usual may lead to finding an answer. If you want to be very basic about it, you solve a problem by pragmatically removing the cause. Is it an oversimplification? Perhaps, but I believe it to be solid food for thought none the less.

1730

If we deal with the Canada clause first, my understanding is that this clause is meant to recognize the multicultural nature of this nation, that with the exception of Canada's aboriginal people, we are all imports here—you, me, all of us. This clause will lay to rest also any of the misconceptions about just what the so-called anglophone society is. It will point to the fact that only a portion is truly anglophone. The other components are a host of ethnic minorities who chose to live in Canada but somewhere other than in the province of Quebec. It will also establish quite clearly that this nation's French-speaking community as well as the purely English-speaking community are no more than ethnic minorities themselves, albeit somewhat larger in size than other minorities that we normally consider as minorities.

It is reasonable to say then that the Canada clause would provide evenly distributed recognition and protection to all ethnic minorities in Canada, including the French and English minorities. It is worth pointing out at this particular juncture that the shift in the context is starting to make some sort of substantial difference. The Canada clause, in my view, is the key to the forcible inducement of equality among the Canadian people from coast to coast.

But what of the "distinct society" clause? If you think back to what I just presented, the real distinct society here is comprised, or rather should be comprised, of all of Canada's original aboriginal people. They have been shamefully slighted, pushed around, forcibly confined to reservations, looked down upon, kept relatively uneducated, etc, and the list goes on, throughout Canada's history. Bestowing upon them the protection offered by the "distinct society" clause will not right all the wrongs, but it will definitely be a good start. Their cultural heritage is not threatened; you are damned right it is not threatened—it is almost extinct. Yet these are the people who should be looked upon by all of us as this nation's greatest ethnographic treasure, and I think everybody is forgetting that.

Quebec's claim to the "distinct society" clause, by the admission of Premier Bourassa himself a number of times during the hearings in public, is based upon a perceived threat to its cultural heritage, or so it is claimed. You are legislators. Is it plausible to you as legislators that no other ethnic minority's cultural heritage is threatened here, only Quebec's? It is not plausible to me. My cultural heritage is not being threatened, neither is the Germans', the Ukrainians' and the rest of them. Only Quebec is claiming to perceive such a threat, which is something I happen to totally disagree with.

The fact is that we as Canadians are fiercely proud of our multicultural makeup, and that includes everyone's cultural heritage, especially Quebec's. We are all cognizant of the francophone community's contribution when it comes to the building of this country, this nation. But when the future of the nation is concerned, riding the coattail of history, making unreasonable demands on the majority and laying exclusive claim to key parts of our Constitution does not cut it any more. We cannot allow going back 100 years to force oblique views upon the development process of that Canadian future.

I submit to you, the members of this committee, and through you to all legislators across this nation, that the "distinct society" clause and all the benefits and protections it bestows upon any given group of peoples have been badly misplaced. Whether by chance or design, its contents and its effect, commonly spoken of as favouritism, have kept this nation in turmoil for years. It is time to put this part of our turbulent history behind us. It is time to get on with the strengthening of this nation for future generations of Canadians to be so proud of. After all, and believe this, the only legacy we can leave for the Canadians of tomorrow is a strong and fair Constitution, a country without internal strife, and through that process a benevolent and unified society upon which the outside world can look with respect, if not with awe.

I believe the time to be right for our legislators to bite the bullet, impose radical but necessary changes beneficial to the welfare of this nation, go through a period of nationwide reconciliation and know that they successfully guided this nation through its darkest and most vulnerable days since Confederation.

In conclusion to my presentation I would convey my appreciation to, and recognize the superhuman efforts put forth by, my Premier, David Peterson, as well as Premier Wells of Newfoundland and Premier Filmon of Manitoba during the recent talks, not only on my behalf but on behalf of every Canadian throughout this great country.

I respectfully thank the members of this committee for furnishing the opportunity for me to address them and for their patience throughout this presentation.

Mr Wildman: You are making a presentation in a way as a representative of what is called in Quebec the allophone minority, neither anglophone nor francophone.

I have two questions. First, how would you respond to the argument that there are not an anglophone majority and a francophone minority as well as other multicultural minorities in this country, but rather two majorities, an anglophone or English-speaking majority outside of Quebec and a French-speaking majority within Quebec?

Mr Nagy: If you offer that question with the understanding, as I presented, that the anglophone community is made up of not only English-speaking people but also all the other ethnic minorities, I will buy that. I have no problem with that.

Mr Wildman: Okay. Then the other question is, if you accept that, would you accept the argument that the government of the province of Quebec should have the power and the mechanisms for preventing the assimilation of that francophone majority within Quebec within the anglophone majority of

North America in a way that the Cajuns of Louisiana have been assimilated?

Mr Nagy: Let me answer you this way. First of all, hopefully we are still talking about the context of Canada, not North America. Having said that, I think Quebec is doing everything possible not to allow anglophone Canadians to assimilate into its society, not vice versa. As to provincial powers to stop people from doing that, certainly, if it does not go overboard, they have the right to create their own laws in Quebec for Quebeckers. I believe in that.

What I am saying is that when it comes to federalism, the price must be paid. If they want to become full partners in the Canadian Constitution and in the Canadian federation, they have to recognize the fact that the rest of the country, as a people, will not stand by and see them perform injustices on the anglophone population that lives in Quebec. I think that should be a basic premise.

Mr Wildman: Finally, you are cognizant of the fact that this Legislative Assembly has already endorsed and ratified the Meech Lake accord, including the "distinct society" clause, some time ago.

Mr Nagy: As I said in my opening remarks, there are certain givens that you accept and that was one of them. I also indicated that I was not here to bitch about how that was done prior to going to public hearings. I also indicated that I am not anti-Meech Lake. What I am also indicating at this juncture is that what was accomplished is not the total package, and as it stands right now, alone, it will not work.

What we need to do is to put those other issues to rest. Hopefully my presentation will provide food for thought, coming straight from a layman, that you legislators might come up in the back of your minds with some kinds of answers or options that my Premier can present at the next round of talks that will eventually lead to putting those problems to rest.

1740

Ms Oddie Munro: I think when you take a look at the previous Ontario committee that looked at Constitutional reform, I guess what they heard from a variety of people appearing before the committee was that section 16 spoke to the aboriginal and multicultural nature of Canada. I do not know, and Mr Allen could correct me if I am wrong, or anyone else who was on that committee, but in many ways I gather there was a good deal of discussion about section 16 and whether or not it spoke to some of those concerns. I am wondering whether that has ever occurred to you, that in fact the Charter of Rights and Freedoms does guarantee that those sensitivities will be recognized?

Mr Nagy: Yes, I am aware of that. On the other hand I am also aware that there is a basic flaw in the preamble itself, which clearly misstated the makeup of Canada and that needs to be changed. That is a start. Sure, there were all sorts of mechanisms written into the Constitution that will provide some certain degree of fragmented guarantees and so on, but if they were all that inclusive and if they were all that complete, then let me ask you, why the "distinct society" clause? Why do all the premiers demand that a Canada clause be added on if those things previously written into the Constitution were all that strong and encompassing?

Ms Oddie Munro: I think there is federal legislation which was brought into effect a couple of years ago dealing with the multicultural reality of Canada. Ontario chose to have a policy—when you take a look at the Constitution in relationship to other documents that define what we are, does this not give you any comfort at all? I hate to use the word "comfort" but I suspect that it is going to be part of my vocabulary too.

Mr Nagy: Judging by what I have heard in recent months and particularly in the last couple of years with respect to the Constitution and all the concerns involved with it, I have to tell you that no, it does not. Well, to some extent it does, but on the other hand I think the only way to make things permanent for years to come is to get them into the Constitution. Federal laws and federal bylaws and stuff like this do not cut it, frankly. They are not permanent. They can be amended. They can be thrown out. They can be changed any time they feel like throwing them out. You cannot throw out a Constitution once it is all put together, and if the rights of aboriginal people are fully addressed in the Constitution, then they will have been addressed for all time, not left to the whims of governments to fool around with, botch around with, change this, change that. They will have been put to bed.

Right now that is what Canada needs. We need to heal wounds. We need to close up all the rifts. The only way we can do that is if we finally come up with one strong Constitution to provide a base for building. That is how I feel about it anyway.

Mr Allen: It has been argued that multiculturalism in Canada, in so far as it exists, which saw recognition of heritage languages in schools—our party has always proposed that there must be much more of that—is a consequence of and was made possible by the earlier duality of Canadian life—admittedly leaving out the aboriginal communities for the moment—between French and English. That provided a symbol which then made it possible to go on and incorporate other language groups in various degrees into the nation's fabric and into the school systems and so on.

The converse, for example, in Manitoba was that when the population there began to close down French rights in the 1880s and 1890s and Catholic rights in the 1880s and 1890s, it then went on after the turn of the century to close down schools that catered to German, Ukrainian and other groups. Taking those two elements into consideration, would you be prepared to recognize that at least in some measure an openness on the part of the anglophone community towards the French, and hopefully an attitude of openness on the part of the French towards English rights in Canada, which is of course ensconced in our Constitution too, provides some measure of hope, at least a toehold and a foothold, for ethnic communities in this country, third-language groups if I may call them that?

Mr Nagy: To some extent, sure you do. I also recognize that there were injustices and wrongs done by both sides, but I do not think that Canadian history as it goes back to the beginning of time is really the issue here. The issue here is to try and do away with all the fragmentations and all the divisive problems and take 1990 and go forward, and for the first time, possibly, build a really strong Constitution for Canada, so that those previous injustices and wrongs done by one side or the other, and it does not matter which, will never be able to be done again. Then we will have a strong nation.

Mr Allen: But you are not saying that there is something wrong with being a nation that is English and French and aboriginal and third language.

Mr Nagy: I never said that. My basic premise is that one of the key issues that makes Canada great is its multicultural

fabric and the anglophone community and the francophone community have always been part of that.

Mr Allen: No, but I did read, "I do not see it as morally acceptable to the Canadian people that Quebec demands that we practise linguistic duality based on French and English, while not only do they refuse to do likewise...."

Mr Nagy: They are not prepared to; that is right.

Mr Allen: I see you talking about a policy that is pursued only in Quebec and it just struck me as I was reading through your section on linguistic duality that you found a really serious problem with linguistic duality.

Mr Nagy: In the context I presented it, yes, I do. Let me put it this way: How could you conceivably come to me and say, "John Nagy, help me while I burn your house down?" Okay?

Mr Polsinelli: It depends if you have any insurance money.

Mr Nagy: That is true.

What I am trying to point to is that one of the things that has been a concern to everyone throughout this nation was injustice. That is one of the injustices, that Quebec demands that we follow a path outside Quebec to accommodate them, which they are not prepared to follow inside Quebec. To me that reeks of preaching water and drinking wine.

Mr Wildman: Some Quebeckers would argue that they are not asking for bilingualism outside Quebec.

Mr Nagy: Yes, but Quebec as a government has always put forth a position that it demands that language rights for anglophones outside Quebec be protected and so on and so forth, but that always has been the case.

The Chair: Thank you, Mr Nagy, for your presentation. We appreciate your coming, particularly on such short notice. We enjoyed having you here and I am sure members will take your discussion under consideration.

Ladies and gentlemen, one final business matter before we adjourn. We are scheduled to go tomorrow afternoon after routine proceedings and again tomorrow evening. The question is whether you would like to have some food brought in between 6 and 7 o'clock, because I believe we will finish just before 6 and start again at 7.

Mr Polsinelli: Are we going tomorrow morning also?

The Chair: No. What is your pleasure?

Miss Roberts: I would suggest that we have food available. I think the cafeteria is closed at 6:30 or something like that.

The Chair: We do not need a motion if that is what you want.

Mr Wildman: Considering the constitutional perambulations we have gone through here, I would like the word "food" defined.

Miss Roberts: Sustenance for the body.

The Chair: We are adjourned until tomorrow afternoon after routine proceedings.

The committee adjourned at 1751.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL AND INTERGOVERNMENTAL AFFAIRS

Thursday 14 June 1990

The committee met at 1541 in room 151.

CONSTITUTIONAL ACCORD
(continued)

The Chair: The committee will come to order, please. Just for members and members of the press, you all have before you the agenda for today. You can see that we will be sitting this evening. The last presenter will be at 9:50. Before getting started, I understand Mr Wildman has a point of order he would like to raise.

Mr Wildman: A few moments ago in the House, the government House leader gave the details of the order of business for next week, as he normally does on Thursday, and indicated that on Wednesday next the House would be debating a government notice of motion for the ratification of the agreement reached by the first ministers on Saturday 9 June.

In response to that, I asked in the House on a point of order if the government House leader could clarify the relationship between that and the work of the committee. I specifically asked what would happen if this committee, hypothetically, had not yet reported by Wednesday. The government House leader's response was, quite correctly, that the House had requested this committee to report by 20 June, but that at any rate the House would be debating a ratification motion presented by the government whether or not this committee had reported.

In that context, I ask what we are doing here. Why are we rushing around the province in a supposed attempt to hear the views of Ontarians on the Meech-plus agreement if in fact the government intends, as the House leader has indicated, to proceed with the ratification of that agreement whether or not this committee has reported.

In other words, while we are supposedly holding hearings across the province to get the opinions of Ontario people about the agreements reached by the first ministers in their conference in Ottawa last week, it sounds to me that the government has decided it is going to proceed with ratification no matter what. If that is the case, then that makes the whole work of this committee a complete farce.

The Chair: Mr Wildman, as you well know, the committee receives its mandate from the House and by motion of the House, which I understand was unanimously agreed to, this committee must report by 20 June. What the report of this committee will be really has very little to do with what the House leader or what the government intends to do next Monday. No matter what, as I view it, we will be or should be making a report to the House. What that report is going to say right now, I do not know. This will have to be decided by the committee. I do not believe it is a proper point of order. I think we are limited by the motion that presented this issue to us and we have to proceed on that basis.

Mr Wildman: I will not debate your ruling, Mr Chair. All I am suggesting is that it appears to me the government is prejudging the work of the committee. It seems to me that this committee could quite well report to the House that the committee has not had sufficient time to hear the opinions of the people of this province, particularly with regard to the suggestions for Senate reform in the agreement of the first ministers. Yet the government House leader has indicated the government will move to ratify the agreement even if that were a report from this committee. I am just suggesting that there is no rush for us to hear the views of people in Ottawa, Sudbury or Windsor if in fact the government is going to proceed anyway.

The Chair: Order, please. You have been here a lot longer than I have. You understand how committees get their mandate. We are limited by what was proposed in the motion and that is what we must proceed with. What this committee will report or what it will not report will be something that will be determined on Wednesday and that will be done based on the hearings that we have had. So I am going to proceed to call our first witness, Edward MacKay.

Mr Wildman: Then in fact we are engaging in a sham, as some of the witnesses said yesterday.

The Chair: Order, please.

EDWARD MacKAY

The Chair: Mr MacKay, we have allowed 20 minutes for your presentation. We would appreciate a short opening statement and then please allow some time for questions. We are in your hands.

Mr MacKay: My name is Edward MacKay and I live in the city of Etobicoke. I would like to thank this committee for this opportunity to present my views on the Meech Lake accord.

One of the objectives of the free trade deal was to deregulate business and to transfer certain powers and authority from Parliament and the legislatures of Canada to the boardrooms of industry, to join Canada and the United States, first economically and then possibly politically. A key objective of the Meech Lake accord is to transfer additional powers from Parliament to the provinces.

Both these actions emasculate Parliament and Canada, while the provinces become more independent and nationalistic. It is a precondition of Canada joining the United States that Quebec leave Canada.

The genius, if you want to call it that, of Mulroney is to portray Canadians who oppose the castration of Canada as cowards during the free trade debate and as anti-Quebec during Meech Lake, and those who would cling to the apron strings of the United States as courageous and those who see Canada as a loose confederation of balkanized provinces as great Canadians.

It is easy to understand, but not to forgive, those premiers who were seduced by this increase in power given freely by a Prime Minister who sees himself more as an adjudicator between warring provinces than as one who represents Canada. What is least forgivable is to use Canada's rich cultural and language diversity to divide and confuse Canadians, to create a crisis and inhibit debate.

It is not fair for Canadians who see Clyde Wells as their de facto leader to saddle him with the responsibility of saving Canada. If brave Newfoundlanders defeat Meech Lake, as is the hope of many Canadians, they will be punished economically and held in ridicule by those who see government as a private club with the stock market as the barometer of success. If Meech Lake fails, Mulroney would drive Quebec out of Canada just to prove that he was right.

The Honourable Ian Scott and Professor Hogg in their respective presentations to this committee stated that they felt the "distinct society" clause was added to make Quebec feel comfortable. Considering the importance attached to the clause by several of the premiers, including Bourassa, and that the courts would ignore the attached legal interpretation, I would submit that the legal interpretation was attached to make this committee feel more comfortable.

Professor Hogg commented that he did not understand why Canadians should care if the Charter of Rights and Freedoms did not apply fully to Quebec. My reply is that Quebeckers are Canadians, as I am a Canadian, and the charter must apply equally to all.

It is the responsibility of the government of Canada to protect Canada's culture and language diversity, a job they have abdicated to Hollywood and to the provinces.

1550

We have no Canada clause because the first ministers do not want one. Aboriginal rights are not protected because the first ministers do not want them to be.

I was offended by the love-in held by the first ministers on national television after a week of secret browbeating and horse-trading. I was sickened when they stood and sang O Canada. I was grieved when they decided to spend taxpayers' money on what amounts to a campaign to seek forgiveness and to get re-elected. To sin Monday to Saturday and to seek forgiveness on Sunday fits a pattern.

Our country Canada is dying. Talk about joining the United States is commonplace. Most Canadians oppose this, but most Canadians oppose free trade. They oppose the goods and services tax. They oppose Meech Lake. They have no political parties to represent them. They have no leaders to lead them.

The Honourable Ian Scott stated that Ontario's giving up six Senate seats is a politically significant but rather meaningless gesture. How ironic when many Canadians consider that our unelected Senate is the last bastion of hope for Canada.

I would submit that Senate reform, Meech Lake and all, is irrelevant unless governments listen to the people and start to protect our environment, our democracy, our economy, our nation against those who would destroy us.

Quebec's place in Canada is of no importance if Canada ceases to exist. Indeed, Canada is of no importance if our civilization ceases to exist.

Mr Allen: Thank you for coming and making a presentation to us. I was interested in a number of your remarks. I wonder why you would think that the Charter of Rights and Freedoms does not apply to Quebec.

Mr MacKay: There was an inference on Tuesday, when Professor Hogg was here. There was a debate going on between various members and the professor as to whether the "distinct society" clause had any validity in law. There is an attached interpretation, which I believe Professor Hogg as well as five or six others signed. I think in response to one of the questions he pointed out that in the interpretation there is an inference that the "distinct society" clause coupled with other parts of the Constitution could be taken by the Supreme Court of Canada to sway them to use the "distinct society" clause to give greater powers to the government of the province of Quebec to restrict the rights of the people of Quebec.

Professor Hogg then made a comment that he could not understand why several premiers—he came back and what he said was that in any case the "distinct society" clause does not restrict the rights of any Canadians outside the province of Quebec. He found it strange that several premiers would be concerned about why, if the Quebec government wanted to restrict the rights of the people of Quebec, it should not be allowed to do so. I think it was in response to Bud Wildman. He made a comment something to the effect that, "Well, maybe they are Canadians." That is where I got that from.

Mr Allen: As I recall, Professor Hogg's principal argument was that there was no sense in which the "distinct society" clause could be considered as conveying any new powers to the province of Quebec. I think there was a reference to a clause, and I wonder how you think this would function in a case like this, the first clause in the Canadian Charter of Rights and Freedoms, which reads:

"The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

I think Mr Hogg's point was that bearing in mind that Quebec has a distinct culture, if that happened to be relevant to a controversial piece of legislation that came before the Supreme Court, that would be one of the elements that would be considered reasonable in a free and democratic society; not that it gave any new powers, but that it simply was one additional element that would be considered. For example, in a case involving equality rights between men and women, it might well be considered that women were less economically advantaged in our society and that therefore a given law might be adjusted in some respect to give them a certain superficial preference, but in reality a proper equality.

How would you yourself understand that this kind of context in which the Charter of Rights functions, namely, with respect to what is reasonable in a free and democratic society, might apply to a minority group like the French in Quebec, or indeed any other minority group?

Mr MacKay: First, I am not a lawyer. Second, I do not have a copy of the interpretation that was attached. Indeed I do not even have a copy of what will be debated in the Legislative Assembly next week. I think what shook me was Professor Hogg's statement. Again, we do not have a recording of it. He said he was surprised that other premiers would be concerned. I go back to what he said. He is a learned gentleman. He is a professor at Osgoode Hall. He expressed that he was concerned why other people in Canada should be concerned if the restrictions were put on Quebec. I take issue with that statement. I am concerned. Whether I have need to be is something that only the Supreme Court will answer some time off in the far future.

Mr Eves: I am not defending Professor Hogg, but I think what he said was that in his opinion—he was one of the six signatories—the "distinct society" clause gave no new powers and did not derogate from anybody's rights under the Charter of Rights and Freedoms.

I might point out that this committee sat during early 1988 and heard hundreds of witnesses, either by written or oral presentation, and that there are constitutional experts who disagree with the six who signed that letter of opinion. I think you are quite correct when you say that ultimately the only individuals who will determine whether that is a fact or not are probably those on the Supreme Court of Canada in some future decision at some unknown point in time.

I think that despite the fact you are not a constitutional expert or a lawyer, you have touched on a point of ambiguity or concern that many Canadians share and indeed many constitutional experts share. But I think I would like to clarify that Professor Hogg was not of that opinion.

Mr MacKay: May I add a comment?

The Chair: Certainly.

Mr MacKay: We can discuss the "distinct society" clause, but again I was not in Ottawa; I was not a witness to much of what was going on. It was all held in secret. But you should recall that Bourassa has said that he will no longer discuss the "distinct society" clause. I understand he got up and he spent one day in his hotel room. He would not even appear at the meetings. I would submit that the "distinct society" clause certainly is very important to him. He is a very astute politician. I would not want to dismiss the importance of the "distinct society" clause, because of that and the fact that several other premiers, who again are astute politicians, as distinct to lawyers and jurists, were also very concerned. Their apprehension rubs off on me.

The Chair: Any further questions? Thank you very much, Mr MacKay. We appreciate your coming, particularly on short notice.

1600

CHAI KALEVAR
SULAKHAN SINGH HUNDAL

The Chair: Our next presenters are Chai Kalevar and Sulakhan Singh Hundal. Welcome, gentlemen. We have allotted 20 minutes for the presentation. We would appreciate it if you could make an opening statement and then allow some time for questions.

Mr Kalevar: I will speak first and then my friend would like to say a few words at the end.

The Chair: Fine; thank you.

Mr Kalevar: First and foremost, I would like to point out that I am not under the illusion here that this is public participation. The accord has been already agreed upon and this is really the tail wagging the dog sort of thing.

As a Liberal I am a bit ashamed, to say the least, that the Liberal government I helped is today caught in a situation where it has practised very highly undemocratic methods and procedures in terms of very important decisions of the nation, the constitutional accord. Of course, I am somewhat comforted that there are Conservative and other sorts of governments also participating in the same ones, so I really cannot blame the Liberal government particularly.

The whole process has been, to begin with, undemocratic and backwards. I would like to see a Constitution amended looking to our common future. This Constitution has been written looking to our divided past. I would like to see a Constitution for Canada written looking at the special geographical location that we occupy between the two superpowers. The decentralization effort that this particular Constitution brings forth would suggest that this Constitution is going to reduce Canada to 10 or maybe 12 apple republics of the north to the United States.

I think this Constitution has failed to exploit and enhance the demographic diversity that Canadians have. The multicultural strength of Canada has not been fully tapped and used for constitutional purposes within Canada and outside Canada. Again, this Constitution has failed our aboriginal peoples. Needless to say, in short, I do support the Canada clause proposed by Manitoba and I think it will be remiss until we get something like that in the Constitution.

Having said that, I would like to point out that I think the distinct society has been a main bone of contention throughout and there have been expert legal opinions written on it etc. Even Professor Hogg and many other respected law professors have come and talked about it.

I would like to point out to you that Canada has some other international obligations. They arise out of the International Covenant on Civil and Political Rights, article 2, subsection 1. It reads something like this:

"Each state party to the present covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant without distinction of any kind, such as race, colour, sex and language."

I feel that the Meech Lake accord directly violates article 2 of the international covenant. It certainly is based on language, English and French, and it uses the words "distinct society" when exactly they say there is to be no distinction based on language. There is no doubt in my mind that the Meech Lake accord is directly contravening the human rights that are obligated on Canada based on the international covenant.

Having said that, I feel that maybe what we need in the context is—I do not know what—another resolution to the problem, because this resolution, in my opinion, creates more questions and more problems than otherwise.

Then of course it raises another question in my mind. If I win a constitutional right, an individual right in Ontario from the Supreme Court, do I enjoy the same right in Quebec or do I need a separate Supreme Court decision saying that now it is a distinct society and the right I won in Ontario is still valid in Quebec? I will be hard pressed to figure that one out, and I certainly wonder how any lawyer without the Supreme Court judgement can even answer that. These are very practical problems posed by the distinct society.

As for immigration, I am not sure but I hear that Quebec already has some immigration offices abroad. I happen to be an immigrant who got his immigration in Montreal and got his citizenship in Toronto. I am at a loss to figure out if a similar thing happens in the future to somebody else coming into Canada, what his rights will be. Will he still claim himself as a Quebec immigrant and so in some way be tied to Quebec? What happens if Canada turns down a refugee and a Quebec immigration office accepts him? Would you not then have a person entering Canada with a special loyalty to Quebec? These are questions certainly not easily answered and I find very difficult to comprehend.

I hope these questions are thought of. I know it is too late. It is really in a sense a waste of time coming here because, as I hear, the decisions have been already made. I do not know

whether this is only a face-saving exercise so that the Premier can say perhaps on 23 June or 22 June, "Yes, we also had hearings in Ontario," when the other three premiers will say so. I am trying to find out if there is really any point to it.

My friend Mr Hundal has something to say.

1610

Mr Hundal: My name is Sulakhan Singh Hundal. I am the chairperson of the Brampton Community and Legal Services in Brampton. It is a great privilege and honour to share my ideas with you. My comments will be very brief and relevant to the accord only and they can be elaborated upon if there are any questions.

I should mention that one of the greatest triumphs of our society and something that Canada has stood for throughout the world is our fairness and, above all, our well-earned reputation for defending equality and ensuring that all of our citizens are extended equality as a right and not as a privilege. Anything which does not contain or even has the appearance of jeopardizing that right is unacceptable. Because of my great respect and honour for this one of our most important rights, I think it should surely be defended in the accord even at the highest cost.

No one could wish more than I for this magnificent country to remain totally united, but I honestly feel that it is a responsibility placed upon each and every citizen to do his utmost to ensure that Canada retains its standing in the world, a standing that it has built up during its most magnificent 123-year history.

I would not hesitate to agree with that faction that has been known to observe that Canada itself is a notable distinct society, perhaps most distinct because of its makeup as one of the world's truly multicultural countries wherein all the cultures have always shared equality under the law and into our freedoms. Regardless of whatever regional cleavages and differences may exist, they still must be always seen as part of our common mosaic.

In closing, I am sure that my remarks can be read as a strong wish that no ruling, no accord, no individual nor segment of society of our great Canadian community should ever be denied any right or privilege shared by any other citizen or region. Thank you for giving me the opportunity to bring this very important point to your notice to be considered by your task force.

Mr Mahoney: Mr Kalevar, thank you for your comments. Just to address the issue of this process in relationship to the other process, do you understand that what we are really dealing with here is in essence another amendment to the Constitution that is entitled, for our purposes, the final communiqué, which was what was arrived at by the first ministers in Ottawa? We are not in essence dealing with Meech, which has already been approved by this Legislature. Are you aware of that?

Mr Kalevar: Yes, but it does not change—

Mr Mahoney: No, but it sets up an important distinction about whether or not this is the tail wagging the dog, to use your phrase. If it is, at least we are doing that in public. But the distinction is that we are not debating the distinct society or the Meech Lake accord in essence. What we are dealing with here is a process whereby, once this particular document is approved by our Legislature, it then starts the clock ticking towards the three-year period during which all legislatures in the country will have to deal with it. For example, Quebec is not dealing with this particular document until after Meech Lake.

In regard to the process we are going through, some good reason for dealing with it in this way is to show Ontario's sincerity to Quebec, Manitoba and New Brunswick, that we are prepared to deal with this particular document. We have already dealt with Meech. I got the sense that you felt you could come here to somehow change the legislated, already-approved process of Meech Lake at this Legislature.

Mr Kalevar: No. Meech-plus is what we are talking about. Is that not correct?

Mr Mahoney: That is right. But most of your comments related to Meech and not to Meech-plus. I just wonder if you have any thoughts on the Senate reform proposal, for example, that has been put forward in Meech-plus, as you call it.

Mr Kalevar: Do you mean the loss of six seats for Ontario?

Mr Mahoney: No. The process is that there will be a commission established that has five years to report on full Senate reform, failing which there would be six seats from Ontario given to western provinces and there would be four other seats redistributed in the east, failing reform of the Senate.

Mr Kalevar: I think, if you have five years for that, I do not see the rush for this passing through here. The way it sounds when you say it is that we have five years to make the decision on Senate reform. If we have five years to make the decision, I will have a written brief next time.

I think the way this is being dealt with and the 23 June deadline all appears to be related to, "Meech is passed and we are passing Meech-plus," but the public really did not get a chance to voice its opinion even on the Meech, which was already passed. It is in that sense I said that it is the tail wagging the dog.

Mr Mahoney: Not to be argumentative, I have a document here of this committee that had extensive public hearings on Meech, so there certainly was input in that. Recognizing that many of the other provinces and the people in this country perhaps do not trust big, bad Ontario—and that is historic; it does not particularly matter which government is in power, that is generally the way the rest of the country feels about our great province—do you think it is important at all that we deal with this in the Legislature as quickly as possible, the Meech-plus process, to show good faith to the rest of the country?

Mr Kalevar: Yes, but I think the good faith has to be shown after due public participation within Ontario. It should not just come from the Premier's office. I think Ontarians are gracious enough to make those gestures and perhaps many of them will support the offer made by the Premier, giving six seats, if that means Canadian unity. That tradeoff is perhaps acceptable to Ontarians, and why should they not be heard?

Mr Allen: I think the two presenters both essentially base their comments on a concern around equality. Am I right?

Mr Kalevar: Yes.

Mr Allen: I would like to pursue that a little bit, because equality seems like a fairly simple idea when you start out but, once you start pursuing it, it sometimes gets a little bit complicated. Could I ask you whether you believe, for example, in affirmative action programs for disadvantaged groups, for people with disabilities or for women?

Mr Kalevar: It is in our charter.

Mr Allen: That is right, it is in subsection 15(2), the affirmative action program, where it says that any law or program designed for the "amelioration of conditions of disadvantaged individuals or groups...that are disadvantaged because of race, national or ethnic origin" etc will not be considered inadmissible because of that fact. In other words, they are trying to achieve equality in conditions of inequality, and that sometimes means treating people slightly differently.

Can you conceive of the possibility that a province like Quebec, which is the homeland of the only jurisdiction in North America that is French-speaking, might in fact need some affirmative action considerations in a Constitution?

Mr Kalevar: Affirmative action, yes, but I do not think affirmative action in the form of altering the Constitution itself in its favour.

Mr Allen: For example, in point of fact we have altered the Constitution with respect to multicultural groups. We have a clause in there that says nothing that happens in Canadian law will disadvantage or impact adversely upon the multicultural heritages and traditions of the peoples of this country.

There is another section that specifically relates to sexual equality in those terms and another that relates to denominational schools in those terms, and there are specific aboriginal rights that exist in our Constitution which are not the same for other people in this country that relate in some parts of the country to fishing and hunting rights and so on.

There are still others in our unwritten Constitution that relate to the rights of pacifist organizations that came to this country at the end of the 19th century. Why would you want to say that this kind of consideration should not be given to a culture that is different from the dominant language culture of the rest of the continent? It might just in fact need some protection.

Mr Kalevar: If I may answer that, first, I have no problem with section 27, the interpretative clause for multiculturalism. I think if you put the distinct society in the same interpretative manner, in section 27B or something, I think it will be just putting it in the right place. But I think it is—

Mr Polsinelli: That is where it is.

The Chair: Order, please. We are already having problems with time.

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Mr Kalevar: The way I understand it, it is going to qualify the group rights. If it is going to qualify the group rights under section 1 or somewhere there, then we could be in trouble.

Mr Allen: No, that section simply says, "The Constitution of Canada shall be interpreted in a manner consistent with," and then it goes on to make the remarks about the distinct society. I just wanted to point out that there is a connection between the distinct society concept and affirmative action principles that are based in our Constitution at the present time.

The Chair: Thank you for your presentation. We appreciate it.

JAMES SMITH

The Chair: Our next presenter is James Smith. We have allowed 20 minutes for your presentation. We hope you can give us a brief opening statement and then allow some time for questions.

Mr Smith: I would like to thank the committee for the opportunity to speak before it today. I would also like to say at the outset that I think it is about time people throughout the province gave some support to the Meech Lake deal. I think it goes a long way in addressing the problem that we had without Quebec being wholly part of the Constitution.

I would also like to say that, like most Canadians, I followed the deliberations last week and, I think like most Canadians, my emotions went up and down as the proceedings seemed to go on. At the end of it, I felt relieved and frustrated. In talking to a lot of people in the last few days since the solution—what seems like a solution—they seemed to share those feelings of frustration.

People are frustrated not only with the fact that it was not in public. Most of our constitutional talks in the past have been in public and we have seen the fighting, we have seen the acrimony, but we have also seen compromise and we have also seen deals being struck. I think that is part of the problem.

The next part is that in not seeing what has gone on and only seeing a result, a lot of people, especially in English-speaking Canada, feel as if somehow something has been taken away. This is not the case. I think in fact we have been given something very important, and that is to have Quebec as part of our Constitution again and part and parcel of the national fabric.

Because the Constitution is so much a symbol, I think that also struck people's emotions. We are playing with a symbol behind closed doors and we were not prepared for it. We were not prepared for the outcome of Meech Lake and we were not prepared for the process of Meech Lake.

It may be redundant for me to talk about the process, but I think it is very important. Time and again people have said to me, "The process needs to be changed." They feel cheated somehow. I cannot stress that enough.

I think part of the problem was also the way the media covered it. Not being able to see it, the media wanted to get as much of a message as they could to Canadians and they were manipulated. I think Canadians in general feel a little bit manipulated.

Unfortunately, I think what has resulted is a lot of people who have more of an intolerant agenda have come forward and expressed that intolerance as anti-Meech-Lake feelings. I think a lot of those feelings may be misplaced and misguided. I think they are Canadians who care about their country; it is just that they are challenged by the change they see going on and they are challenged by the change in the values and the symbols. Their Constitution is a symbol to them and they were not prepared for it.

Again, in light of this negativism that I perhaps started with, I would like to go on to more of a positive message and urge this committee to take some of that positive message forward. I may be stating the obvious when I say that we define ourselves as a country by the fact that we are English and French. It is not as simple as it sounds.

The English in the country define themselves as not being French and are challenged by the French fact. Conversely, the French fact in the country challenges itself and formulates its ideas and concepts of itself vis-à-vis the English fact. I think in the past English-speaking Canadians have tended to react to events in history that French Canadians have started the ball rolling: the Rebellion Losses Bill, the hanging of Louis Riel, the conscription crisis, the silent revolution in Quebec. All these

things are French Canadian issues, often centred in Quebec, that English Canada reacts to.

With the Meech Lake accord we did not react as English-speaking Canadians. We really did not react to an event in French Canada. There was the sovereignty-association debate in the early 1980s and the subsequent election, in the mid-1980s, of Robert Bourassa bringing his five very moderate proposals forward. English Canada was silent to Quebec. Quebec had the debate, Quebec fought the battles and then came to the table and said, "This is what we want." English Canada had no counterargument. We had no vision.

The result of this has been that English Canadians are somewhat surprised by the Meech Lake process and by the result. Part of the negative reaction that you are seeing in some parts of the country right now is based on the fact that we as English-speaking Canadians were not debating the issue of how we want to react to our fellow citizens who speak French, how we want to react to one another and what kind of nation we want to build.

Granted, English Canada is not as homogeneous as Quebec and perhaps it is much more difficult. The multicultural fact is much more clearly stated in a city like Toronto or Vancouver than it is in Quebec City, or Montreal for that matter. What this does is present us with an even greater challenge. I believe we have to take this multicultural message to the people of Quebec and say that the way they can solve some of their language problems and their shrinking population is by accepting the multicultural ideal that we in English Canada have in fact accepted.

I think Ontario, as the heartland of English-speaking Canada, must take the lead in this debate. With respect, I would like to suggest an agenda, that there be an English-speaking Canadian constitutional convention. It may not have to be as official as all that, but we really have to start the debate somewhere. I think everyone knows the items that are up to be looked at: Senate reform, federal-provincial powers, the duality of the nation or do English Canadians want to go to more of a sovereignty-association setup? If Meech Lake fails and Quebec comes back to the table, regardless of what you call it, it will be sovereignty-association. I think what we have to do, again, is look at how we want to deal with the French-speaking majority in the province of Quebec.

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I think the next step in this agenda has to be asking, what kind of nation do we want to build? Do we want to remain a small country or do we want to grow in size and wealth, and how do we want to do this? Again, once English Canada has sorted that out for itself, then it can go on and share that dream with French Canada. Lise Bisset said the other night on television that French Canadians will never feel the same way that English-speaking Canadians would like them to feel about the country. I would like to challenge that. I believe very strongly that what we can offer French Canada can be a creative, vibrant nation that will continue to grow into the next century.

Unfortunately, when we tinker with a Constitution, all kinds of problems can come unravelled. To repeat, when you tinker with a symbol, people's backs get up. I think we have to take care when in the future we change our Constitution that we do not take too many interest groups to the Constitution because the Constitution should be a living document. It should not be the kind of document that carves in stone, that freeze-dries a country at a certain time and place. I know native groups and women's groups are saying they are being left out of the Constitutional debate. In fact, every Canadian has been included in the Constitutional debate, but it has been happening behind closed doors. Those rights that are there in the Constitution are for men, for women, for aboriginal Canadians, for French, for English, for all.

I think from time to time there have to be special guarantees. For example, the special status that Quebec has been granted with Meech Lake is a recognition of a distinctive society within Canada, and that should be stated and encouraged. But we have to be careful that we do not freeze the Constitution in time and are never able to change it.

Again, I would like to state my support for the accord and for the companion resolution that the committee, and in turn the House, is going to look at. I would like to challenge all English-speaking Canadians to look at it more carefully and to see that this is not a sellout to Quebec; it is not a sellout to anyone. Really, it is a granting of rights, an improvement on the Constitution. I am sure we can improve the process, but let us go forward and set a new agenda for the next century.

Ms Oddie Munro: Thank you for your very thoughtful presentation. It certainly has many positive notes to it as many people and as many other presentations have been. I think once the accord came in and was accepted by the provinces, I would have thought, as an observer, in terms of how the provinces reacted to it as far as debate within their own provinces was concerned, that Senate reform would have been as significant a debate as it has become lately in the western provinces.

I like your style and I like the suggestions you have made for the next round of constitutional talks. Quebec was one of the few provinces that actually wanted a formal agreement on immigration and refugees, and we have just had a multicultural delegation saying, "What does that mean for the rest of Canada?" I do not know whether you are saying that maybe English-speaking people suffer from a little bit of a malaise, but how would you suggest we stimulate the process so that we are not accused of being élitists and that we do get the grass-roots opinion on some of the things that have already been suggested for the next round?

Mr Smith: A good, old-fashioned town hall meeting is a good way to get some of the debate stirred up. I know that the Premier has Premier's councils on a number of different issues and generally invites presentations and thoughtful Canadians to bring them forward. Perhaps this is an initiative that one of the Premier's councils could take on.

Miss Roberts: That is something I would like to go on with, if I might, the information. Even if we do begin the process, and we have to begin a public consultation process, it was suggested yesterday that perhaps the commission on the Senate would go around first and then it could come back to the various provinces to look at it at that time. But there are two ways of looking at it. You can have the town hall debates first and then you come to something else, then you go back to the town hall debates, but sooner or later the process comes down to legislatures and those people who have the function of making that decision under our Constitution as it now exists.

Can you define more how you think the process would be helpful? Do you think we should start first with the town hall meetings, or should we go from the overall commission that is going to be looking at the Senate—and there are many other things to be looked at—and then go back to the town hall meetings? What I am suggesting to you is, we are going to have to

really consult with the public on maybe two occasions, if not three.

Mr Smith: Sure. Personally, I would like to see a process from the grass roots up. In any debate in a convention or any situation, you usually have plenary sessions and what they do is generally massage the issue and come out with one or two resolutions that clearly define it, either yes or no.

Miss Roberts: Yes, but somebody sets that plenary session, somebody sets that agenda. Let's be very clear that someone sets that agenda to begin with and that is where we have to be very concerned. Who sets that agenda to begin with? I think we have a document to go on with this communiqué to help with that agenda, but remember always that there is someone who sets that, even before you go the town hall meeting.

Mr Smith: That is true.

Miss Roberts: How structured do you want that setting to be, or should it be very loose?

Mr Smith: Personally, I would like to see a very organic process to begin with, to see the ideas come out. Let's face it, there is a bit of reaction in Ontario that says, "We gave away Senate seats." We did not give away Senate seats, but that is the perception, that we gave something away. If Ontarians really do not want an elected Senate, would rather see the thing disappear altogether and just have a single legislative body in Ottawa, as we do in Ontario, then maybe that is something that Ontario has to bring to the Senate task force, whereas the western provinces may have one, two, or three different ideas of an elected Senate

I hope I am answering your question. I think I would like to see it coming from the town hall sort of process to the Legislature and then on to the commission.

Miss Roberts: To a commission structure and then on to the legislatures, then back to the town hall and then back. Would that be about it? You see, the decisions are all going to be narrowed down by the time you get to the commission, up to the legislatures and then there will be options that have to be brought back down. Thank you very much for your idea.

Mr Smith: I appreciate it.

The Chair: Mr Smith, thank you very much for your presentation. It was very thoughtful. Thank you for appearing on such short notice.

Mr Smith: My pleasure; thank you for the opportunity.

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JOHN CRISPO

The Chair: Our next presenter is Professor John Crispo. We have allowed 20 minutes for the presentation and questions, so if you could give us a brief statement and perhaps allow some time for questions, we would appreciate it.

Dr Crispo: Let me start by saying that for me this is a rare, perhaps unique and certainly a very welcome opportunity, because I come to praise all leaders of the three parties in this province. I have to add especially the Premier, David Peterson. My only fear is that if David hears I am praising him, he may reconsider or reverse his position.

I have never had more pride in this province and its leaders. I do not remember when I have been prouder of an Ontario Premier. This, as some of you will know, is a man with whom I have disagreed fairly strongly before, particularly on free trade and I will not go over that. As far as I am concerned, he more than made up it on the Meech Lake crisis. It was not easy. I do not think it was easy despite the fact that Bob Rae and Andy Brandt—I hope Michael Harris continues in the tradition of Andy Brandt—have been backing him.

I was so pleased to see the three leaders in Ontario stand up for Canada and Quebec. I want to stress Canada and Quebec. It was a time of crisis and it would have been easy to turn the other cheek. What I would like to concentrate on is this: I would be glad to deal with some of the specifics of the companion resolution in the question period, but I want to say something through you, if I can, to what I think will be the many critics in Ontario, because I think our leaders have been bigger than our people.

Certainly, this was not unique, by the way, to Ontario. I was so proud of the three western premiers, who I think are must bigger than their people in the final analysis. I think where we went wrong was when the Prime Minister and the 10 premiers, who came up with Meech Lake and were so euphoric about their accomplishment that they did not think it was necessary to explain it to the Canadian public, let the media loose who of course just go and look for carping critics, and then everything fell apart. But what people forget was that this was the Quebec round. This was to make good on Trudeau's promise of constitutional renewal for Quebec.

That is what disturbed me when I heard all about aboriginal rights and women's rights and territorial rights and all manner of other rights. I am not trying to diminish those rights. They are important rights that we have to deal with, but this was the Quebec round. It was stated as such.

If only English Canadians early on had tried to put themselves in Quebec's position during this debate. What if we were six million English Canadians surrounded by 275 million Frenchmen? I can just imagine what we would be doing to try to protect our culture and language, but that is exactly the position that, in my judgement, Quebec is in.

At the same time I think we have failed to recognize world trends. Outstanding examples are Russia and Yugoslavia, but it is spreading all over the world. Cultural, ethnic, nationalistic, religious groups are asserting their right to be themselves. They are saying, "We want to be part of a broader political economy or economic unit or what have you, but we want some autonomy to assert those things that we treasure because they are so different."

It is in that context that another feature that still has not hit home to English Canadians was the reasonableness of Bourassa's position. I do not think anybody was in a more difficult position that he was and people were thinking he was not a Canadian. Anybody who watched his performance, even just on the press, saw that he was a Canadian. We had before in 1981-82, 22 untenable demands from René Lévesque that were dismissed out of hand by everybody else in English Canada, as well as by many in French Canada.

Bourassa came forward with the five most moderate and reasonable proposals Quebec has ever put to the rest of Canada when asked to put on the table what he could live with to bring Quebec back into the constitutional fold. Then, of course, I could not believe what has been done with what I would argue are the facts about Meech Lake.

I have submitted the brief that I submitted to the federal committee recently on Meech Lake, and I do not want to elaborate on this, but there is what was said about the "distinct

society" in relation to the charter, despite the fact that at least 90% of constitutional experts in Canada had the view I have had that there is no fundamental incompatibility.

There is what was said about federal spending when in fact, for the first time in our history, this document says that the federal government has the right to spend in areas of provincial jurisdiction without their approval. There is the caveat they can contract out. The only thing that bothered me, and it is in my brief, was the unanimity on Senate reform. Because I am in the west a lot, I am very much aware of the alienation out there. I do not want to say it is the next crisis, because that alienates native people and women, but it is a major issue we have to deal with and I have some reservations about that unanimity.

The final thing was that I do not know whether we ever all really weighed the risks. I think people said this was just fear and scaremongering, something I got used to during the free trade debate, but I think at the very least, if we had not—well, we have not done it yet and I do not want to even contemplate it, but if we do not pass Meech Lake, the instability and the uncertainty is going to be so damaging to this country that I do not want to contemplate the results. At the worst we will break up over it and that will be an unmitigated disaster, because this is the finest country on the face of the earth. There is nothing that comes close to it, and I have done a lot of travelling.

Let me conclude. The process was flawed—I do not deny that—but I have a different opinion on why it was flawed. I think it goes back to what I said. They never went out and explained the original document. I think a lot of things, like constitutions, are eventually hammered out behind closed doors. You are dealing with power brokers. It is like collective bargaining. It is like international relations. If you go public with everything, you pander to the media and the public. You take positions that you cannot get off of. So there has to be a combination, but there was not the right combination.

The result was not perfect. What constitutional document in any country has ever been perfect? But the alternative was, to me, so appalling, so dangerous, so risky that—I keep sounding as if we are there and we are not there. I was so relieved when it happened, but it still could go down. If it goes down now, I think the consequences will be worse because Quebec, I think, will feel especially betrayed, but that is an aside.

What I am here to say is that David Peterson played, I believe, the major part in rescuing this situation and all Canadians should relish his statesmanship, backed, I want to emphasize, by the leaders of the opposition parties in this province.

I am going to say something that will not sit well with some of you, but for an Ontario Premier to say he is a Canadian is commonplace. For an Ontario Premier to really act like a Canadian is not so commonplace. But for an Ontario Premier to make a real contribution, some would even call it a sacrifice, in my judgement I think is unique. It is a moment to be savoured in this province and in this country and I am savouring it. I just hope more Canadians and Ontarians, if I can use that expression, do the same thing. I repeat, I am proud of all three political leaders in this province.

Mr Eves: Professor Crispo, I want to deal with the issue, I suppose, of process. You have alluded to it somewhat in your concluding remarks. What do you feel about the process, not only with respect to Meech Lake? I suppose this province, along with the province of Quebec and perhaps some others, took the lead with respect to public hearings. We had many months of public hearings with respect to the Meech Lake accord, as you probably know, and heard from hundreds of witnesses.

Dr Crispo: I think the focal point should be legislative hearings at the national and provincial levels. It is ultimately the elected politicians who make the judgements and I think that is where the hearings should take place. That does not rule out all sorts of private forums on radio and TV. The previous witness mentioned town hall forums. Certainly during the free trade debate it was all over the place. But I think on matters concerning the Constitution, the focal point should be the national and provincial legislatures and their committees.

Mr Eves: I guess there is a more direct question. Earlier this afternoon—you were not here—my colleague Mr Wildman echoed some frustration that I think a lot of us on this committee feel. We were being told that we have to scurry around the province now in six days and hold public hearings and get input on the companion resolution, but that no matter what happens we have to pass the companion resolution, as is, by next Wednesday, period. What is the point of having public hearings for six days and scurrying around the province? If your mind is made up, do not confuse you with the facts or what the public has to say.

Dr Crispo: I guess you could say it is a fait accompli. It is, if we are going to have Meech Lake. In my judgement it is very important to do this. I heard mention earlier of good faith. I think we need good faith on all sides in this country right now. Somebody also mentioned that the rest of Canada is often very suspicious of Ontario, which they equate with Toronto or Hogtown, and I think no province is a better province to provide a gesture of good faith right now than this province. I think it is a good way to follow up on the unanimity that seemed to apply to the leaders in the province. It is a gesture of good faith and it does mean the hearings are not as meaningful as they otherwise would have been.

1650

Ms Oddie Munro: As we are trying to grapple with the whole idea of process, many of the elements of which are contained in this document that goes along with Meech Lake, I think what I am hearing you say—I heard Mr Kelly, who was a well-known federal labour negotiator saying it the other day too—is that there are appropriate ways in which discussions take place and in which decisions are made, and then other people take hold of what happens there. It seems to me what you are saying is that we are not communicating well enough or sometimes not at all, whoever we are—that can be determined too—at the various stages.

I guess the second part is that there has been some concern expressed among people coming to the committee and around the table: "Why the hurry on this one? Why do we have to get something together by next Tuesday or Wednesday?" In my mind, process is an ongoing thing. Everyone has already agreed there will be other rounds. I do not think this particular accord was meant to be larger than the Constitution. I am wondering, if communications might be one of the issues, how do we then allay the fears of people?

Dr Crispo: I was sitting through the previous witness and somebody said, "You've got to start somewhere." In the case of the Senate, we will now have this commission, which presumably is going to put forward some proposals. Those would be tentative proposals. I guess it would be useful to hold

hearings in advance. They will be holding hearings. It would seem to me logical for them to hold their hearings, come out with their findings, which are not going to be final and so on, and then for hearings to follow that.

If I can just go back, the lesson to be learned—I am not going to condemn the Prime Minister and the 10 ministers who came up with Meech Lake for the way they did it. There is a lot of misconception that it was done over a weekend. The premiers made it very clear that this was not the case. It began in 1986; even before 1986. I think the real failure this time around was to explain the thing. I think I said it earlier. I have been doing so much talking today in other forums that I have forgotten, but I probably used the term earlier today with you. There was so much euphoria that they had done this, that the three national political leaders were for it, that they just took it for granted that it would sail through.

Well, you cannot take anything like a Constitution for granted, especially in a country as diverse as this one. When they did not get out there and defend it and the media did nothing to help—they never do anything on the basis of the facts. They went out and said, "Does anybody dislike this thing?" Well, you can find anybody who will dislike anything. They featured them and it started to roll, and still, I must say, no real explanation was forthcoming. By the time people started to explain it, it was rolling and the misconceptions were just unbelievable.

I think that is the important thing to recognize. At every stage, but particularly at the proposal stage, whoever is making the proposals had better be out there explaining precisely what they mean and answering the critics who in my judgement tend to distort and twist what they mean because of their differing points of view.

Mr Allen: Professor Crispo, I suspect you and I agree more on this subject than we might have done on free trade.

Dr Crispo: I will accept that.

Mr Allen: As you know, much of the companion resolution that we have before us in fact has been embodied in previous decisions made by this Legislature, when we debated and passed the accord and the companion resolutions of our own construction some time ago. The one matter that does stand out as distinct and new for this committee is the matter respecting the Senate. I just wonder if you have had enough time to reflect on the proposal that has come, the fallback position, the loss of six, the redistribution, what we will end up with five years down the road if there is no agreement for Senate reform, or on the other hand, if we follow the principles and do achieve Senate reform based on elected, equitable and some measure of effectiveness.

Dr Crispo: I have presented views on the Senate. I have not appeared before the Ontario committee yet. I am delinquent. I do not know whether it is still holding hearings. I should get to it. I am doing too many things.

I have very strong views on the Senate. As for equal, no way; it is not going to be equal. I think the west knows that. I tried to tell them, "Look, perhaps we can get a Senate where the east and the west together have 60% to 66%, so that the Maritimes, the Prairies and British Columbia together can say to Ontario and Quebec: 'That's not fair. It's unfair to the rest of the country. We don't buy that.'"

As for elected, I would prefer a very complicated variation on the German model, with party lists and proportional representation coming both through the federal election and provincial election. I do not want to get into it; it is too complicated.

Effective: It has to be effective but it cannot be equal to the House or we just have deadlock. It has to have delaying powers and other types of powers, or maybe even some issues where it is able to force an election, but ultimately the House would have to be supreme, perhaps after an election.

Even what I think is a fairly reasonable proposal, I do not know if we would get anything like that through. It is going to be very difficult to get Senate reform. I hope we get it. It is absolutely indispensable, something about the alienation that I think is legitimate in the west. I am surprised there is not more of it in the east.

Let's say we do not get anything. Ontario loses six senators. The worst happens. I still think it is worth it for Canada. This province has so much influence in so many other ways, in terms of population in the House of Commons, in terms of the financial clout, in terms of the manufacturing clout. It is a powerhouse.

For people to worry that Ontario would have fewer senators than Quebec, I understand, but to me Canada is worth more than whether Ontario has as many senators as Quebec. That is all I can say. I hope it does not come to that. I hope we come up with a decent reform proposal, but I am not predicting it. It is going to be difficult.

Mr Mahoney: I was interested in your comments earlier that you had some fears about the Premier finding out about your concurrence for fear he would change his position. I have in front of me an article by Des Morton, who says very much what you have said. I know Des to be very much on the left spectrum politically and you on the right.

Dr Crispo: Now, that is provocative. I am right, left and centre, depending on the issue.

Mr Eves: Of course the guy who asked the question was Attila the Hun.

Dr Crispo: I am not going to touch that.

Mr Mahoney: Thank you for your comments. I found them very refreshing and, frankly, exciting. The question I have is not really tongue in cheek, but recognizing that the last time I was with you was in St John's, Newfoundland, when you were strongly fighting for free trade and were accused, I believe, of being a paid salesman for the Mulroney government, which you denied strongly. I would like to see you be a paid or unpaid salesman for this thing in St John's, Newfoundland, this time to help get it through.

Dr Crispo: No. Let me tell you, if I may, that there is nobody who would rather be in Newfoundland right now and in Manitoba. A lot of us would like to do it. Unfortunately, and I think this is unfortunate, we would not be welcome. We could do more harm than good and that is sad, because two relatively small provinces representing together about 7% of the Canadian public are deciding our future and yet they do not want other Canadians in there. I happen to believe that is a sound judgement; I am not going to either province.

I am able to be moderate and reasonable. When the circumstances demand it, I can be otherwise.

Mr Mahoney: Shocking.

Dr Crispo: If I went in there I think I could state the case well, but I think they would resent my presence or anybody

else's presence. Quite frankly, I hope the Prime Minister does not go to either province, even if he is invited. I am not sure David Peterson might not be able to go. I wish he would take the two other leaders with him. I think that would be a grand gesture. But I think anybody who goes in there now who is not a native of those provinces is risking causing more harm than good.

It is a sad commentary. This is Canada. This is my country whose fate they are deciding and yet I have to sit here and say that I know I cannot go in there because I will do more harm than good. I do not like that, but I think it is reality.

The Chair: Thank you very much for appearing before the committee today and on short notice. We have appreciated your comments.

1700

SHELDON GODFREY

The Chair: The next presenter will be Sheldon Godfrey. On your agenda it indicates that he is here representing the Canadian Council of Christians and Jews. I understand, Mr Godfrey, that is not the case, that this is a personal opinion.

Mr Godfrey: That is correct. The Canadian Council of Christians and Jews—one or two members of the executive committee are here today—intended to make a presentation. It is a national organization. They were unable in the time frame to get it together. I did not know that until early this morning. I would like to proceed as a personal submission on behalf of myself and Judy Godfrey as well.

The Chair: Because you were representing a group, we allowed half an hour. We will be allowing 20 minutes to keep that uniform.

Mr Godfrey: That is just fine. Over the past few years, we—that is, Judy Godfrey and myself—have been engaged in a research project dealing with the development of civil and political rights in some of Canada's cultural and religious groups during the century or so after the founding of Halifax in 1749. Our research is mostly completed and will result shortly in a book. While our project is not yet public, we have gained a different perspective about the kind of country Canada has become, in ways that relate directly to the substance of the Meech Lake accord and the clarification or companion resolution signed by the first ministers last weekend.

We have had mixed feelings about whether to come and present a brief to your committee. On the one hand, the impression received from the media over the past week is that the first ministers have signed a commitment to secure passage of that agreement by their legislatures and that all three parties in Ontario have already agreed to confirm the adoption of the accord without further amendments. Indeed, the lack of opportunity for public discussion over adoption of the accord has inflamed feelings and caused misunderstandings.

On the other hand, the issue before you deals with vital aspects of Canada's future on which every one of us should have the right to voice an opinion. By holding these hearings, you yourselves are undertaking to learn what the public thinks of the accord as clarified and report that to the Legislature before its passage. We can only hope that the impression received from the media, that Ontario's position has already been determined, is not in fact the case, that this committee is not a rubber stamp of decisions already made, and we hope that what the public says has the possibility to change votes in the Legislature.

In saying that, may I say I would think that those not in favour of the accord would have more success in going, obviously, to other provinces, such as Newfoundland, as Professor Crispo has just mentioned, rather than coming here to Toronto, where I am sure you are not getting a lot of people opposed to the accord, as they are in Manitoba, obviously.

We are here because we believe that the constitutional changes in the accord and the proposed 1990 Constitution Act raise very serious questions and that there is a basic issue of principle that has still to be discussed. We are here to oppose the adoption of the Meech Lake accord as presently proposed. The proposed constitutional changes threaten by a single document to reverse 200 years of precedent resulting in legal equality for people of all cultures in Canada.

From 1760 on, Canada developed as a very different kind of country from those in the old world, as well as from the United States to the south. In the old world, most countries had a national religion and were composed of a single nationality or culture. Full rights of citizenship belonged only to those who made up the vast majority of the citizens of each. Minorities, when they existed in European countries, were tolerated as second-class citizens, not given full equality.

Canada has not until very recently had its rights and freedoms written into formal constitutions, yet this country has always been in the forefront of granting equal rights to different cultural groups. This was achieved by hard-won precedent upon precedent over the past two centuries. In 1774, for example, Catholics were given full civil rights by the time of the Quebec Act, which applied to Ontario as well, and were given full political rights in 1791. England, the mother country, in contrast to Canada, did not grant Catholics equal rights until the Catholic Emancipation Act was passed more than a generation later, in 1829.

It should also be noted in this connection that by the time of the Declaration of Independence in 1776, none of the 13 American colonies allowed Catholics equal civil or political rights, and most of the individual United States continued to deny equal rights to Catholics long after the American Constitution in 1787.

Conversely, Canadian Jews were given rights to hold high government office by commission in Quebec in the 1760s, long before any similar examples in the United States, or England itself. Again, laws were passed in some of the Canadian colonies giving Quakers equal civil and political rights long before the same were granted in England. It should be noted that the Legislature of Lower Canada, of course now part of the province of Quebec, gave equal rights to Quakers at its very first session in 1792.

In fact, although Canada was a new nation, it was one of the first countries in the world to evolve to accept principles of equality of minority cultural groups rather than merely tolerating them. The equality has not yet been perfected. There have been deplorable instances where different cultural groups in Canada have received less than equal treatment, but all such groups in Canada now have legal equality, and equality has been accepted as the ideal. Canada has evolved as a country where there is no cultural majority but where a number of different cultures live in mutual respect. Canada is, in a way, a model for the world to come.

Some of the misunderstandings that have arisen over the past few years about the future direction of the Canadian nation

have stemmed from the fact that we do not all speak the same language and that some words we use all the time mean different things in Canada's two official languages. The English word "nation" and the French word "nation" do not necessarily have the same meaning in the different languages. A dictionary definition might help to explain the difference. The Encyclopedia of Social Sciences defines nationalism, in a political sense, as the determination of the inhabitants of a territorial entity to gain sovereignty and to make statehood correspond to independence. In this sense, "nation" is an area having a defined geographical boundary encompassing people of different cultures, a state which has the political priority of all subjects, regardless of their own language or ethnic group. This is the definition of "nation" that has officially been applied in Canada since Confederation.

The fact that different cultural groups are sometimes referred to as having different nationalities should cause no confusion. In this sense, a cultural group realizes that the state is only a particular form of political organization which may or may not conform to their nationality. Canada has evolved as a nation based on this definition as well. It has a number of cultures that live side by side in official equality.

The term "French Canadian nation," for example, has historically been used to refer to those of a particular cultural background across Canada, not just within the province of Quebec. While our traditions and laws have long contained provisions for the protection of the French language and culture within Quebec, Canada has been the homeland of all of us, the French Canadian as well as other cultural groups.

There is a second view of "nation" that somehow combines the political and cultural interpretations. In this view, people of one cultural background that outnumber the others attempt to make geographic boundaries to enclose themselves, rather than to encompass other minorities as well. In this view, there is a danger that other minority cultures may be excluded or merely tolerated but not be equal, that the citizenship of this kind of nation will be defined in such a way that only those of the dominant culture can qualify as full citizens. There have been examples of this kind of nation-state elsewhere in the world for centuries, but a renewed movement to create nation-states of the second kind developed in Europe in the closing years of the last century and culminated during the Second World War. There has never been a Canadian equivalent of the nation-state to this time.

Over the past 100 years, probably starting with Jules-Paul Tardivel, some in French Canada have suggested the creation of a French Canadian nation of the second kind, with Quebec as the homeland of the French Canadian people. The recognition of Quebec as a distinct society in the proposed 1990 Constitution Act will be the first official recognition in Canadian history of an ethnic nation of the second kind anywhere in Canada. Without constitutional restraint or definition, the distinct society could be devoted to preserving and protecting the rights of French Canadians in precedence to those of other cultures in Quebec. Its record shows that the government of Quebec may not be as sensitive to this issue as we would all hope. M. Bourassa saw no threat to anyone in reversing the long-standing rights of minority cultures to express themselves freely on commercial signs when the language law was enacted two years ago.

In the rest of Canada, for the present, all cultures, including the French Canadian culture, continue to have equal rights to preservation with each other. However, the precedent is being set for other distinct societies to emerge and create this new ethnic, cultural kind of nation in other provinces as well. It is our belief that this fundamental change in the nature of the rights of Canada's cultural groupings is not in accordance with the traditions of this country. The consequences of approving an agreement allowing such a fundamental change have not been adequately considered, and guarantees of the continuation of equal rights do not appear to be clearly in place.

In attempting to save Canada as a geographic unity, you must not change the basic philosophy and ideals of the country so significantly that its traditions of freedom and equality for all cultures are diminished or lost. In January 1790, exactly 200 years ago, immediately after the French revolution, one cultural group petitioned the national assembly of the French republic. The words of that petition have as much meaning today as they did then. This is what they said:

"The word 'toleration,' which after so many centuries and so many acts of intolerance, appeared to be a word full of humanity and reason, is no longer suitable to a nation that wishes to firmly place its rights upon the eternal foundations of justice. America, to which politics will owe so many useful lessons, has rejected the word from its code, as a term tending to compromise individual liberty and to sacrifice certain classes of men to other classes. To tolerate is, in fact, to suffer that which you could, if you wished, prevent and prohibit."

You must not allow cultural groups in any part of the country to be more than equal or any Canadian to be merely tolerated. To create a distinct society in any part of the country will have that effect unless accompanied simultaneously by clearly worded and unequivocal guarantees of equal rights for all cultures. Because of the existing constitutional framework, if the guarantees are not in place before the accord is approved, the provincial veto and the "notwithstanding" clause may prevent further changes.

You on this committee are in a crucial position to protect all peoples in Canada. This may be our last chance to retain the status of equal rights that historically have made Canada the true north, strong and free.

1710

Ms Oddie Munro: I think all provinces in the country, and through the provinces and the leaders to the Prime Minister, since the Constitution came into effect and right through the Meech Lake accord, have not lost sight of the fact that multiculturalism and aboriginal rights and a whole host of other things have been important. I do not think for a moment that any of those leaders have also ignored the fact that Quebec, for example, has a strong multicultural diversity, as does New Brunswick and a lot of others.

If you are not in favour of this particular document which goes along with the Meech Lake accord, I do not know what kind of document you would be coming up with. I see this as being a significant amendment which will be followed by other rounds, and no doubt the next one will be looking at, as it has all along, the values of multiculturalism, the ethnic nature of the country and the evolution of a nation which will take all of that into account.

I mentioned earlier that all provinces since the Constitution have gone into negotiations with the federal government on immigration and refugees. Did I hear you correctly? Are you against the signing of this ratification?

Mr Godfrey: Without proper guarantees for minorities and cultural groups all across the country, I am opposed to the signing of this accord, of course.

Ms Oddie Munro: I think that is an interesting comment and concern, but it is my understanding that going back over all the discussions, and all the discussions which are not part of the constitutional debates but are federal-provincial, those concerns are there and will be dealt with.

Mr Godfrey: "They will be dealt with" is a much different thing. When you make a bargain, as I am sure you know—but the process seems to be working against this—you lay your cards on the table and you make your bargain. It is called giving consideration. One party gives something, the other party is going to give something and you come up with a solution. If you give all your cards in advance, and then you make your agreement and then you come back to do a second agreement, your position in having a bargain is not the same. That is what has been done institutionally by setting up this process.

A Quebec round and a second round is really saying, "Here's what we want, and now we'll see if we can get anything later in the second round." I think the bargaining process is not a realistic one for dealing with fundamental rights of this nature. That, I hope, answers your question. I do not think it should be done by bargaining, but certainly bargaining at round one and giving everything up and then saying at round two, "Now can I have such-and-so," does not get it for you.

Ms Oddie Munro: I guess we have to establish what has been given up. That is where I think it is an opinion that we should look at, that I disagree.

Mr Godfrey: Fine.

Mr Allen: Thank you very much for a very thoughtful presentation. I look forward to seeing the research that you are publishing fairly soon. My question is the question I asked earlier of another presenter, basically. We have in the Charter of Rights and Freedoms an equality rights section in section 15. It has two parts to it. The first one lays out the rights and then the second one says, yes, but it is legitimate to engage in affirmative action to balance out the disadvantages that either individuals or groups may have. If those seem to in some way allow a special element of this, that or another for one of those groups as distinct from another—for example, in a custody battle, male and female persons are not equal in terms of the financial resources, so you have a law that allows some to the lesser advantaged person financially in the contest in order to balance things up, and that can be contested as not playing fairly and equally with both sexes. So you have those dilemmas.

I am not sure how in your scheme you really wrestle with those. As I see it, you are really projecting the philosophy of liberal rights, which essentially says that cultural and other collective groups struggle freely in the marketplace of ideas and cultural exchange. There is no place for a law or positive action assisting or favouring one or the other. They either die or live or disappear. If culture takes no political expression, then I am afraid I do not really follow your argument in the complexities of the Canadian case.

Mr Godfrey: Okay. I am sorry I had to read it. It was something that had been gone over and I did that. Perhaps I could have explained it. Incidentally, you will all get copies of this. I have given it to the clerk, but two of the pages are reversed, if I may apologize for that. I think pages 3 and 4 should be in a different order. When you get it, if you would not mind just bearing that in mind, I think it will make it slightly easier to follow.

What I am suggesting—and I am not talking about the goodwill of people in Quebec or French Canadians, because I do not question their goodwill—is that legally, a Meech Lake accord and companion resolution, in our opinion and submission, may have the effect of creating two, different kinds of Canada: one, a multicultural Canada—and I am talking about rights, not how many cultures there are—everywhere but Quebec and, two, a unicultural Canada in Quebec, where other minorities are not tolerated.

I am not talking about whether the good people of Quebec would not tolerate them. They obviously would tolerate them; they tolerate them now. There is a human rights commission in Quebec that said maybe it is wrong for the Montreal school board to have said you cannot whisper in Greek in a schoolyard. So there are good people in Quebec, there is no question about it. I have no doubt about the goodwill of the majority, but legally the nature of the country is being changed without adequate consideration.

We have a multicultural policy federally. We have had it since the early 1970s. Before that, it was an evolving policy. The bilingual and bicultural commission never came to grips with whether we should have a bicultural Canada or not and finally decided we should be officially bilingual. The federal government then adopted a multicultural policy. That is about to go, legally, if this document goes through. It will be multicultural in the rest of Canada; it will be unicultural, legally, in Quebec. There may be cultural programs. There may be some cultural rights. I am not questioning that. But, by and large, the one culture that will predominate, if it wants to, and have the right to preserve and promote itself and perhaps even inadvertently, or maybe advertently, at the expense of others or not caring, is the French Canadian culture. That is a fundamental change in the kind of country we have. I do not think it should go by without being addressed. It has not been addressed. I hope you read my submission very carefully. That is what we are saying.

Mr Allen: I guess I was under the impression that it had been addressed all kinds of places in all kinds of writings, in all kinds of debates. Surely the fact that one crosses a language frontier makes a significant difference. When you are crossing from a majority language frontier to a minority language, you are in quite a qualitatively different situation. One could hardly deny, if one lived in Montreal for any length of time, that there is a multicultural community in Quebec which is living within the context of a dominant French-language culture and that there are all kinds of both French subgroups and other imports of all kinds and that Quebec will be a multicultural society regardless, and that the circumstances of a dominant language culture, by contrast, in the English part of the country does not have to have any kind of protection because the English language is so triumphant, so powerful it is wiping out everybody else anyhow.

Everybody else is being reduced to cultural, folkloric exhibitions, and that is about where we get. We have our fancy foods and that is the end of it. We will not even tolerate in this province the creation of officially publicly sponsored immersion schools in Ukrainian or Greek or any of the other languages, for example, so dominant is the English language. I just do not understand why one is so lightweight with respect to the domination of English-language culture of other cultures and

then really protesting about the even modest aggressiveness of French-language culture in the context of Quebec.

Mr Godfrey: There is no question that French Canada is and has been entitled to protect its language. I am not questioning that. I think they were entitled to that in the British North America Act in the province of Quebec. What we are talking about is culture as opposed to language, and protecting and promoting one culture at the expense of others, which is now about to be legally allowed. That is all I am talking about.

Mr Wildman: Can I ask one point? I am sorry I was not present here, but you do understand of course that this Legislature has already ratified the Meech Lake accord and that the majority in the House is determined to ratify next week the agreement that was reached on 9 June, no matter what this committee does.

Mr Godfrey: Well, that was our frustration in coming here. Having public debates and making it quite plain to the public that the Legislature has determined to do what it wants, no matter what the public says, made it very difficult for us to come here, but I have come in any event.

Mr Wildman: I share your frustration.

Mr Godfrey: Thank you.

The Chair: Mr Godfrey, thank you very much for your presentation. We appreciate your coming, particularly on short notice, and we thank you for the written submission.

The Chair: Our next presenter is Helen Charney. I do not know whether she is here yet or not. Apparently she is not present. Perhaps we could deal with the schedule for a moment. As I understand it, Madam Clerk, everyone who has indicated that he wanted to come has either been contacted and is now on this list—

Clerk of the Committee: Is either on the list or has declined to appear. Some of them, where the committee indicated yesterday, who had called in late yesterday or today were told to please submit something in writing to the committee. There are about four of those.

The Chair: As a result, we will not be sitting tomorrow. Plans are being made to be in Ottawa on Monday morning, Sudbury late Monday afternoon. Later on today, Debbie will be giving you the information about the travel arrangements and the travel plans.

Mr Wildman: We will be starting at 9 o'clock on Monday morning.

The Chair: Monday morning, yes.

Miss Roberts: At the Westin?

The Chair: At the Westin, yes. She will give you that information once we have it ready. If anyone is leaving early, he should get that information from Debbie before he goes. She has the arrangements and she can give you the package. Did I see Mrs Charney come in?

Interjection: She just went for a Xerox.

The Chair: Perhaps then we can adjourn for five minutes and grab a coffee.

Mr Polsinelli: We should stay here. If we break up for five minutes, we are not going to get back here.

The Chair: Well, just stay here. You can grab a coffee.

Mr Polsinelli: You can keep talking for five minutes.

The Chair: No, unless you would like to talk for five minutes, Mr Polsinelli. Five minutes or sooner.

The committee recessed at 1724.

1730

HELEN CHARNEY

The Chair: Our final presenter this afternoon is Helen Charney. Welcome to the committee. We have allowed 20 minutes for your presentation. We hope that you will allow some time for questions. We have been given your written submission. I do not know whether all members have the same document that I have, but the pages may be mixed up.

Mrs Charney: Pages 3 and 4, I think, were switched.

Mr Wildman: No more than the committee is.

Miss Roberts: On that side of the room.

Mr Grandmaître: Some members.

Mrs Charney: I want to thank you for this opportunity to share some of my thoughts and feelings with you. Incidentally, I do not know if you are offering a prize for briefest brief, but I expect to qualify.

For many months I have compulsively clipped news items relating to the Meech Lake accord, raced to catch relevant radio programs, hopped from one news channel to another and written shocked and appalled notes to myself about it all. I hope some of the following observations that are distilled from that experience will ring true for you too. In any event, I believe it is important to bear witness, even though one may feel helpless to prevent the unfolding of disastrous events.

We citizens, voters, we who love Canada, have constantly been described as being confused about the Meech Lake accord, and many of us have admitted to it; but that confusion was abetted by those who were determined to stifle troubling questions.

The relentless outpouring of flagrantly contradictory messages from usually respected and authoritative sources does more than raise doubts about the credibility of the authorities themselves. It eventually raises doubts about one's own ability to grasp the meaning; doubts expressed as: "This doesn't make sense to me. I guess I'm not smart enough to get it."

So the polls continue to report correctly that most people admit they still do not understand the Meech Lake accord. We, the public, the great unwashed, are confused because there was a deliberate strategy to fudge the issues in order to contain doubts about their merits. So much for informed participation in the democratic process.

Following the outpouring of disgust over the manipulative procedures we have been subjected to, all the first ministers vowed, "Never again." Yet, here today was an opportunity for Premier David Peterson to offer the people of Ontario "an act of good faith" by allowing sufficient time to publicize these hearings, for considered submissions to be prepared for the committee and time for subsequent debate and exchange of ideas to develop. Yet he failed to do so. We demanded more than token participation henceforth and we were promised it. If not now, when?

When you, all the political parties, formed a coalition in support of the Meech Lake accord, you withdrew your services from a significant portion of the electorate. Your leadership, your access to experts and to the media were withheld from those who opposed the accord—hardly fair value for taxes paid. Not fair, period.

While saving Canada was the manifest rationale for the terrorist tactics that were employed, many voices pointed out that Quebec would still be there on 24 June, that deadlines could be pushed back if necessary. Clearly, it was the voice of business that demanded an end to the uncertainty, and right now.

However, the economic outlook was cold and gloomy well before the Meech Lake debate gained momentum. You could look it up: the routine roll call of lost jobs and lost homes, bankrupt businesses, disappearing industries, resources and markets. The uncertainty aroused by our constitutional debate did not cause all that. It did not help, but in any case we were in for a bad patch. So what if some investments were delayed or withheld? We are very free with our advice and admonitions to eastern European countries, chiding them that they must be prepared to endure a period of even more severe economic hardship because, after all, democracy does not come cheaply. Apparently we could not even afford the time.

Because the smaller provinces share the bitter conviction that their voices are not heard at the centre of power, they resolved to focus on Senate reform. If the accord fails, the proposed commission on the Senate will be stillborn. If Meech passes, there will follow five years of mighty wrangling which, bearing in mind the universal veto, could only issue forth a mouse. They have no hope of present relief.

In the spirit of helpfulness, allow me to suggest a method by which they could achieve a modicum of relief immediately. Furthermore, elected members would escape their ignominious bondage and their electors would learn to love and praise them.

All these miracles would come about if Canadian political parties would abandon the iron law of party discipline and adopt the British custom that permits a party member to oppose party policy on any issue of consuming interest or concern to that member or his constituents. Imagine, you would not be pitched out of caucus for expressing dissent. Banish party discipline. Do it now. We all deserve a reward for what we have been through. Why not?

Mr Polsinelli: I wish we could vote on that.

Mrs Charney: Make a motion.

Mr Polsinelli: I would support it.

Mr Wildman: I appreciate the briefness of your brief. I would like to comment on and question you on pages 2 and 4, first on page 4.

First off, I want to preface this by saying I am sure you are aware that this Legislature has already ratified the Meech Lake accord, and in the vote on the Meech Lake accord within our caucus, there was in fact dissent. Four or five members within our caucus voted against the accord, even though the caucus in general and our leader were in favour. So it is not as if it was, as you called it, an iron rule of party discipline in regard at least to our caucus with regard to the Meech Lake accord.

Mrs Charney: I am embarrassed, but I am sorry, I do not know which party you are sitting for.

Mr Wildman: I am a New Democrat.

Mrs Charney: Excuse me. No, I was wondering if that would apply if you were the governing party.

Mr Wildman: I do not know. We have never had that opportunity as yet.

In regard to page 2, there has been all sorts of criticism, and I have been one of those involved in the criticism, of the process, because we have had situations in 1981, 1982, 1987 and now again in 1990 where 11 men sat down together, often in a crisis situation, with their advisers behind closed doors and basically engaged in something approximating labour negotiations to reach agreements. The general public was not involved, even to the point of the sessions not being public until after crucial decisions were made.

I was particularly concerned about the fact that certain important groups in our society were excluded from the process: aboriginal people, women, northerners, for instance. Now we have been told that the first ministers are also opposed to that process and have understood that it is not a good process, that the Constitution of the country belongs to everyone in the country, that people in general should be involved, and they have proposed a new process.

One of the experiments with that new process is the proposal for Senate reform in the agreement signed in Ottawa on Saturday, where there will be a commission that will be representative and will travel around the country seeking opinions prior to the first ministers' meeting to discuss Senate reform.

I want to ask two questions. First, do you see that as a model for a new process for constitutional amendment? When you answer that question, I will put my other question.

1740

Mrs Charney: Were you describing a travelling caravan with a representative sampling of women, natives and dancing girls?

Mr Wildman: We are not sure exactly. That is a little vague. The commission will be set up, which will be representative of the Parliament of Canada and the legislatures of the provinces. We are not sure what the total membership will be or how the membership will be made up, although there have been constitutional experts appear before this committee who have indicated that there should be provision to ensure the commission is representative of people in the country.

Mrs Charney: Actually, I think the only thing that matters is whether the advice of the people who appear before you is paid attention to. That is really the heart of the matter. I think the Charest committee was very interesting as long as it was on our minds. What is the point? Would that be any different?

As a matter of fact, at an earlier time and place I was part of a non-governmental agency where we did a study about the governmental and non-governmental interface or something like that, and then it was a question of power between the citizens and the government. We were advocating that no people even agree to join advisory committees unless they could have some commitment that their results would be paid attention to. I think that is not a bad idea. Somehow, somewhere there has to be some commitment, obviously with some value assessment of what the input is.

Mr Wildman: I do not want to take up the time of other members. My other question is this: With regard to the new process that is being proposed—

Mrs Charney: I am sorry. I do not hear anything new in it, but I probably would when I get a chance to read it closely.

Mr Wildman: I am not suggesting it is new, but that is how it has been described before us. There will be a commission to seek opinions prior to the first ministers' meeting rather than what we have gone through over the last number of years where the first ministers have met, come to an agreement and then sought opinion subsequently.

Mrs Charney: Oh, I am sorry. I thought there were two parallel streams. You are saying this is meant to feed into the first ministers.

Mr Wildman: Yes.

Mrs Charney: Yes, you want to.

Mr Wildman: While we have been told that is a new process, as a committee of this Legislature we now have been presented with a situation where the government has indicated that it wants us to seek public opinions on the accord reached in Ottawa last week but that we only have until next Wednesday to do it, and that even if this committee does not report or if even if we do report, the government will be introducing a motion to ratify the agreement before the end of next week. That has already been decided even before we have received the input we are seeking from the public.

Mrs Charney: Are you asking if I share your unhappiness?

Mr Wildman: I am just asking for your reaction to that process.

Mrs Charney: Yes. I hope I was not being too subtle here in the paragraph called "Changing Bad Habits?" I think that is what I was talking about there. I cannot see any reason. This just seems to be a reflexive habit, following the old patterns, to have called this meeting during the day without any notice that it was going to happen. It is preposterous in my mind; maybe not to you.

Mr Wildman: It is to me.

Miss Roberts: Just briefly, most of the things that are in this communiqué were taken directly from the report that was completed by the predecessor of this committee in June 1988. Equality rights, the role of the aboriginal peoples, various things have all been put before the public here in Ontario, were talked about and were brought back and are part of this communiqué—I am sure my friend understands that—with the exception of the Senate.

The evidence, the information we have heard is that the important part about the Senate is that it is a process. That is what they are looking at, the process that is set out to reform the Senate, and that Senate reform was important to Manitoba and very important to Newfoundland. That is where it appears we seem to have given something. What I would like you to see is that although we are hung by a process that is right in our Constitution now, we have to change our Constitution just to change the process. That is what we are trying to do. That is what many of the communiqué's points are all about.

Mrs Charney: What are you referring to? I am sorry. Communiqué on what?

Miss Roberts: It is the agreement that came out of Ottawa. I just want to point out that we are progressing towards changing the process and that is what we would like to hear from you. How do we change the process? How do we make it better?

Mrs Charney: I wish I had known you were going to ask me that question.

Miss Roberts: When you complain about the process, you always feel that you have something to give. That is what we are asking people.

Mrs Charney: Obviously I am referring to the specific experience and that is, if you do not let people know about it, first of all, you are not going to have a terrific response or perhaps the one you want. If you do not give them enough time to do some research and thinking, and to get together with their groups if they share a common concern, you are not going to have a properly considered submission or brief. Those are the points I was complaining about here today. No one knows that this is taking place except you and your friends and the invited people who started off the week. I do not want to belabour it. It seems just painfully obvious to me.

In so far as you feel you have discussed the other issues that are now covered in the communiqué, you did put your finger on an important point, which of course is that suddenly out of left field the Senate becomes the burning issue. Maybe if I lived in western Canada I would be really excited about the Senate issue, and I would have had some chance to think about the pros and cons and whether I even wanted an elected Senate or whatever. But I live in Ontario and this has never been an issue on the public agenda, to my knowledge.

Mr Eves: The two questions I was going to ask were almost directly related to Mr Wildman's. Just to make a couple of comments, I think we share the frustration you have with the process, both past and current, where we as members of this committee are being asked in six days' time to get input on companion resolutions to the Meech Lake accord and are being told: "Regardless of how many people you hear in those six days, where you travel, what they say, regardless of whether your opinion is that you like them or not, the only thing we as the government will accept is voting on the companion resolutions as they are worded now. You are not entitled to change one comma, one word."

Mrs Charney: I beg your pardon?

Mr Eves: That is what we are being told literally by the Premier of the province and by the government House leader, that this document will pass as it is.

Mrs Charney: You mean this has the same strictures as the original Meech accord?

Mr Eves: No. I am saying that the companion—

Mrs Charney: No comma changed?

Mr Eves: No. That is not what I am saying. This government or this Legislature has already voted on the Meech Lake accord.

Mrs Charney: Yes.

Mr Eves: We did that in June 1988. I concur with Mr Wildman, although his caucus did not have a monopoly on a free vote. As I recall, there were eight people who voted against the Meech Lake accord. I am proud to say that I was one.

Mrs Charney: Thank you.

Mr Eves: Five members of my party, the Progressive Conservative Party, voted against it. Three members of the New Democratic Party voted against it. By coincidence, I am sure, no members of the Liberal Party voted against it. I am sure that is just a coincidence and I am sure they did have a free vote. Be that as it may, the politics out of the way, that is a fact. The vote is recorded. You can look it up.

I had some problems with voting for the Meech Lake accord because I thought a lot of concerns were expressed in the majority report of this committee, of which I was a member in 1988, and we also expressed some further concerns, expressed by a minority report that I was co-author of, coming out of that committee.

To be fair and equitable, I do see some of those concerns being addressed somewhat in the companion resolution that the first ministers agreed to last week in Ottawa. However, whether it goes far enough to get my vote next Wednesday will remain to be seen. I think there are very few issues more important than the Constitution of a country in terms of partisan politics. Quite frankly, I do not think partisan politics have any place in any legislative body with respect to voting on a constitution or important moral issues such as abortion or capital punishment.

If that is being critical of the current provincial government in any province or, be it as it may, the current federal government in Canada, I am sorry but that is where I stand. I think there are some issues that are more important than whether I am a Progressive Conservative, or they are Liberals or they are New Democrats.

I congratulate you on the opinion you have enunciated here. I do not know how many of the 130 of us in the Legislature will have the courage to take your opinion to heart, but if I had my way, all 130 would.

Miss Roberts: Just a comment: I would like to reiterate that indeed all of us feel exactly the way he does and that we all think it is something that has nothing to do with partisan politics and that we are here to look to Canada and Canadians first—I just want to make that clear—and that we all look at each submission in a clear manner and try to integrate it into our thoughts and our concerns for our country.

Mr Mahoney: Even though we keep hearing partisan comments.

Miss Roberts: That is right.

Interjections.

The Chair: On that note, thank you very much for appearing before the committee. I appreciate that you are here on very short notice, and if the rest of the committee can settle down, we have taken your comments to heart.

The committee recessed at 1752.

Evening Sitting

The committee resumed at 1904 in room 151.

The Chair: The committee will come to order, please. This is the select committee on constitutional and intergovernmental affairs. I would like to welcome Mr Cousens to the committee.

NATIONAL ACTION COMMITTEE ON THE STATUS OF WOMEN

The Chair: Our first presenter this evening is Judy Rebick, National Action Committee on the Status of Women. I understand you are in the company of Dr Barbara Cameron. Would you please come forward.

We have allowed half an hour for your presentation. We hope that you will make an opening statement and then allow some time for questions.

Ms Rebick: Okay, we will do our best. The first thing I would like to say, with all due respect, is that we are here under protest. We were asked yesterday morning to present our position. We have no illusions that anything we are going to say here is going to have any influence whatsoever on what the Ontario Legislature does in relation to this agreement, but we are so concerned and upset and angry about what has happened over the last weeks that we felt it important to go on the record with the proposals that we will be bringing forward over the summer to the hearings that have been set up through this process.

The women of Canada are tired of scrambling for crumbs that drop from the constitutional table. We are tired of having to fight for these crumbs with other groups excluded from full participation in the political institutions of Canada.

A clear lesson has emerged from the June 1990 constitutional extravaganza: Eleven white, middle-class men sitting behind closed doors making deals do not represent the people of Canada or make good laws. But the anger of Canadians did not simply arise from the fact that the premiers were meeting behind closed doors. The source of the anger is the growing recognition on the part of Canadians that the premiers meeting collectively do not represent them. The issue is more fundamental than whether or not the premiers were in front of television cameras in their meetings, although that was important. What is at stake is the basic issue of political representation in a democratic society.

The questions raised by the recent spectacle are these: Do the 10 premiers and the Prime Minister meeting collectively represent the interests of the Canadian people? Were the interests of women represented at that table, or the interests of aboriginal people or of visible minorities or of the disabled? We believe the answer to these questions is a resounding no.

What was represented at that constitutional table were the narrow interests of provincial governments as institutions and the political interests of parties. If that seems a bit harsh, I think it is very telling that what broke the logjam was the Ontario Premier's willingness to give up patronage appointments, which is basically what the Senate is today. That is what broke the logjam—not recognition of aboriginal rights, not the recognition of women's rights, but the willingness to trade off some patronage appointments.

The National Action Committee on the Status of Women rejects this process of constitutional amendment and rejects the products of this process. What the June spectacle raises is the necessity of a profound reform of Canadian political institutions. Such a reform must go far beyond holding first ministers' meetings in public or holding sham constitutional hearings after deals have already been cut. What is required is a reform of our political institutions from top to bottom to provide for genuine participation by groups currently excluded—by women, aboriginal peoples, the disabled, visible minorities and linguistic and cultural minorities.

We are appearing before this committee today to serve notice that the NAC will not be satisfied by a mere mention of women in this or that clause of a constitutional agreement. What we are after is serious representation in all political processes and in all political institutions.

The proposal in the first ministers' agreement with respect to Senate reform shows clearly the problems with a process of constitutional change which involves only the provincial premiers and the Prime Minister.

There has been no widespread popular debate across Canada on the issue of Senate reform, yet the companion resolution outlines a set of changes to which the provincial premiers and the Prime Minister have already committed themselves. In keeping with the sham process of public participation characteristic of the Meech Lake process, the resolution provides for a round of public hearings which will take place over a short period of time and result in a report whose conclusions have already been written.

The outcome of the hearings is predetermined not only by the contents of the resolution but by the composition of the commission. It is to be made up of representatives of the provincial governments and "an appropriate number" of representatives of the federal government and the territories. The report of the commission, after being tabled in the various legislatures, will go to yet another meeting of first ministers, where the real decision-making takes place, and we will probably—no doubt—see a repeat of the process we saw last week.

Again Canadians are to be summoned to make their objections to already determined policies before committees representing the people who designed the policies. This makes a mockery of democratic consultation. The entire process is rigged from beginning to end.

1910

We would like to remind this committee that the original justification for the Senate was that it would provide representation for some of the interests which otherwise would not sufficiently be represented in the House of Commons. In the context of the British North America Act of 1867, these interests were the smaller regions and linguistic minorities.

In the 1990s the problems of underrepresentation are situated quite differently than in the 1860s, although it was hard to tell that in looking at the first ministers' conference, which looked suspiciously like the meeting of the Fathers of Confederation. Concerns today focus not only on the problems of regional and linguistic representation but on the problems of representation for women, for aboriginal people, for visible minorities, for the disabled and for cultural minorities.

Despite the changing times, the Meech Lake accord and the companion resolution reinforce the notion that it is provinces which are the only constituencies worthy of representation. The National Action Committee on the Status of Women rejects this outdated notion.

We believe that to be at all legitimate, any commission on reform of the Senate must include representation from all the constituencies currently lacking adequate representation in Canadian political institutions. Any proposed commission on Senate reform should include representation from aboriginal people, women, visible minorities, disabled and cultural minorities.

Because the first ministers' agreement does not provide such representation on the commission, and for other reasons which I will get into, we believe the agreement should be rejected.

What we propose for a commission on Senate reform we also propose for the redefinition of representation of the Senate itself. If the Senate is to be reformed, the women of Canada wish to be fully represented in it.

We will immediately be submitting to our 550 member groups across Canada proposals for a feminist reform of the Senate which will provide for representation of all groups in society currently underrepresented in our political system.

The principles we will be promoting will include the following: guaranteed representation for women in the Senate in proportion to our representation in the population; guaranteed representation for other disadvantaged groups on the same basis; redefinition of the powers of the Senate to assign it particular responsibility for initiating and monitoring measures to correct the effects of past discrimination.

We will be proposing specific language for constitutional reform to give effect to these proposals. In particular, we will be proposing that the existing section 23 of the Constitution Act of 1867, which sets out obsolete property qualifications for senators, be replaced by a section providing guaranteed representation to disadvantaged groups in proportion to their presence in the population of Canada.

What we want in the Senate we will be seeking in all the political institutions of society: in political parties, in the House of Commons, in the decision-making positions within the public service.

The proposals of NAC are not being put forward in opposition to the claims for the representation of any other group or communities in society. We recognize that there are problems of representation of regional interests in Canada. We are also aware that proposals have been made over the years to make the Senate a legislative chamber where the national communities of Canada achieve effective representation.

The issue of whether the basic units for representation in the Senate are provinces, regions or nations—by nations we mean Quebec, English-speaking Canada, aboriginal peoples—will be addressed through amendments to section 22 of the Constitution Act of 1867. We will encourage discussion on this issue among our member groups as well. But no matter what decisions are made with respect to section 22, our proposals for affirmative action representation in the Senate will remain valid.

Women make up 51% of the population of provinces or territories, regions or nations. Other disadvantaged groups are similarly distributed throughout these territories or communities. Representation of women can be achieved as a guaranteed part of the representation of provinces, regions, nations or any other unit within the Senate.

The only group seeking increased political representation which is not made up 51% of women is the existing political and economic élite at the federal and provincial levels.

We have also sections on our views on the flaws of the Meech Lake accord and on the agreement that was reached, which I will try and summarize since we are running short of time.

NAC does not believe that the companion resolution corrects the major flaws with the Meech Lake accord. In fact, in some ways it has increased our concern. We are particularly concerned with the effects of clause 7 of the accord, which provides for a new section 106A of the Constitution Act of 1867 and would allow provinces to opt out of national cost-shared programs with compensation.

We believe, as do child care advocacy groups across Canada, that this amendment will be a serious obstacle to the implementation of a universal system of quality non-profit child care in this country. We also believe, as do social welfare organizations, that this amendment will seriously restrict the federal role in solving the problems of poverty in Canada. With the increasing feminization of poverty, this is a particular concern of NAC.

We are concerned that the federal government will use this proposed clause to deny its responsibility in these areas. We also anticipate that the federal government will use the clause to argue that it cannot use its spending powers to enforce the provisions of the Canada Health Act and ensure uniform access of women across Canada to medical services for abortion.

It was typical of the entire Meech Lake process that the concerns about the restriction of federal spending powers raised by women, antipoverty organizations and other groups representing the disadvantaged did not even make it on to the table of the first ministers' talks on Meech Lake last week.

It is our understanding from discussions with representatives of aboriginal peoples that the legal opinion released in conjunction with the first ministers' agreement has raised fears about the jurisdiction of the federal government over aboriginal people and aboriginal lands.

We are not in a position ourselves to make a judgement on whether this legal opinion could have any effect on the interpretation of powers under section 91. The point we wish to make is that the exclusion of aboriginal peoples from discussions which affect their very survival has created a situation of uncertainty and fear.

This is a replay of the situation which developed for many women in English Canada around the exclusion of women from clause 16 of the Meech Lake accord. The failure to mention women gave rise to fears that a hierarchy of rights had been created in Canada and that the rights of women guaranteed under the Charter of Rights and Freedoms were not being protected.

This is probably one of the things that has upset us most about what happened around the Meech Lake process, because what got set up by the language and the process of Meech Lake were competing rights, to say that women's rights were somewhat in competition with the rights of Quebec or that the rights of Quebec were in competition with aboriginal rights. We categorically reject this hierarchy of rights. We do not believe there is any contradiction between women's rights and the rights of Quebec, and we resent terribly that women in this country have been put in a position to have to argue in that way.

The lesson that must be learned from Meech Lake is that the process of negotiating a constitutional amendment cannot be

separated from the quality of the product which emerges. The exclusion of practically all Canadians from the process—in particular, representatives of women, aboriginal peoples, visible minorities and the disabled—has resulted in a final agreement that has very little legitimacy among the people of this country.

At its 1989 annual general meeting NAC unanimously endorsed a resolution which included recognition of the five demands of Quebec as a basis for a constitutional accord. Our opposition to the Meech Lake accord, stated in that same resolution, rests on other provisions of the accord. In particular, we reject the notion that the granting to Quebec of the powers it needs to protect and develop the French language and culture necessitates giving all the other provinces the same powers.

It is our belief that the premiers of the English-speaking provinces of Canada used the legitimate demands of Quebec as an excuse to make a grab for more powers for themselves. They then tried to hide what they had done by telling English Canadians that this was the price to be paid for bringing Quebec into the Constitution.

NAC does not believe there is any price to be paid for giving constitutional recognition to the needs of the people of Quebec to increase the capacity of their government to protect and develop their language and culture. On the contrary, we believe that this constitutional recognition benefits all Canadians and, had it been explained to all Canadians, we believe most Canadians would have supported it.

We strongly object to the outrageous treatment of the aboriginal peoples throughout the Meech Lake process and, indeed, the entire process of constitutional reform.

We note that now Senate reform is the priority constitutional issue. The one thing that has changed, coming out of the Meech Lake accord, is that the aboriginal peoples were promised they would be the first priority. Here is yet one more broken promise.

The patronizing approach of the first ministers is evident in the provision that the Prime Minister will invite to these conferences representatives of aboriginal peoples and territorial governments to "participate in the discussion of matters of interest to aboriginal peoples of Canada." What issues of Canadian government are not of interest to aboriginal peoples? What is required is the constitutional recognition of the right of the first nations to self-government and to genuine participation in the institutions of Canadian government.

We must say with pleasure that we watch the struggle going on in Manitoba now where the native people are standing up for themselves and for all people in Canada in protesting this process.

1920

The Meech Lake accord will not solve the problems of Canadian Confederation. Instead, the process by which the accord was negotiated has increased the problems of misunderstanding and division within Canadian society.

NAC believes that the constitutional future of this country is too important to be left in the hands of 11 men meeting in secret behind closed doors. As early as 1981 we passed a resolution condemning first ministers' conferences as a method of constitutional reform and recommending instead a constituent assembly of which half the participants would be women.

We must say that we view with some cynicism the sudden awareness of Brian Mulroney that there is a problem with the process, which he came to at the last moment after a storm of criticism, and we have very little question, given all these agreements—they virtually guarantee that this process will continue.

The lesson for us out of the antidemocratic process which has unfolded around the Meech Lake accord since it was first brought forward in the spring of 1987 is that women, aboriginal people, visible minorities, the disabled and cultural minorities must work together to take control of the constitutional process, out of the hands of the political élites of Canada and turn it over to the Canadian people.

Our demands have increased, not decreased, as a result of the Meech Lake process. We are serving notice here today that we intend to fight for genuine reform of political institutions that will allow for meaningful participation in politics for women and other disadvantaged groups.

We demand in the future to be seated at the constitutional table and in the decision-making halls of this country and we want to be sitting there with representatives of the aboriginal people, visible minorities, the disabled, cultural minorities and other disadvantaged groups. We are no longer willing to be represented by proxy.

Mr Cousens: I would like to thank you very much for your very thoughtful presentation. One of the things I would like to thank you for is your ability to consider the aboriginal peoples, visible minorities, the disabled and cultural minorities. I think we all have to have a bigger picture and I think you have brought that to us.

I am concerned with your opening statement, which is not in print, and I would like you to comment further on it. When you said that you are here under protest I sensed a very deep frustration that is coming out from a very concerned group of people. I would like you to just discuss that in some way.

You bring out in your report concern about the process that was followed. Are you concerned at all with the speed at which this government is trying to push through the recommendations that are before the House right now? Is that part of your thinking? Do you feel that you have had sufficient time to get ready for this? When you said that at the beginning, you really triggered in me the whole thought process of, what are we really doing? If you would not mind commenting on that, I would appreciate it.

Ms Rebick: You are under orders to get this thing passed unchanged by the 23rd, so what is the point of these hearings? I do not understand the point of them.

We are here because we want to put on record what we have to say. It does not seem to be very useful to boycott committee hearings like this. But you cannot change this thing. If you change it, you are going to be accused of breaking up the country. That is what the whole process has been from beginning to end, not a discussion of what the country needs, not a discussion of what Quebec's demands are, but basically blackmail.

People are told, "Either support this or you are going to be responsible for breaking up the country." That is what happened last week. That is the kind of pressure the first ministers were under. That is the kind of pressure even we have been under over the last year when we wanted to raise objections. It is nonsense. That crisis was manufactured by the Meech Lake process. It did not exist before the Meech Lake process. It was manufactured by it—not that it was not real.

Now you have been told that the first ministers signed this, and they were in there for seven days and it was like day and

night and so on and so forth. It was just like when the world was created. They created this document in as much time under these terrible conditions. We saw them every night, how they were suffering. Are you going to change it now? I do not think so. Do you even have the option of suggesting an amendment if you are convinced to do so by someone in these hearings? There is no option for you at all.

On top of this, I was called on Tuesday night about these hearings and I said: "Well, I am sorry. I am going to be out of town on Friday and Monday. When does it start?" He said, "Yesterday." I said, "When does it finish?" He said, "Tuesday." I said: "Are you serious? You are seriously telling me this?"

Then I find out that you will be on the road on Monday and Tuesday, so if we do not present tonight we are finished. Fortunately we were so furious about what happened last week that we have been closeted day and night working out our position on it, so we are ready for you.

But nobody else is. I can see that from the list you have. Individuals and I am sure most groups that were asked refused to come because they were not ready to comment. So that is why I say it is a sham, with all due respect to the people here. I do not blame you for it. But we do not expect anything to come of these hearings except that we get our views on the record.

Yes, we are very frustrated. We are very frustrated about what happened last week. We are very frustrated about what has happened in the last three years because we think this process has created profound damage in this country that is going to take a long time to heal, and it was not necessary. That is where our frustration is coming from.

Mr Wildman: Let me say at the outset that I share your admiration for Elijah Harper. Earlier I expressed views about this process very similar to the ones you have just expressed. Let me ask a couple of things.

First, you recognize of course that this Legislature has already ratified the Meech Lake accord.

Ms Rebick: Yes.

Mr Wildman: So legally there is no reason why we have to report before 23 June and pass it. But having said that, there has been a lot of criticism, not just from women's groups or aboriginal groups but from many, many people right across the country, whether they are just interested individuals or people involved in organizations who have something to say about the process. They want a new process.

What has been proposed with regard to Senate reform, we have been told, is an attempt to find a new process, in that rather than having the first ministers and their advisers closeted for a number of days, coming up with an agreement and then asking legislatures subsequent to that to ratify without change, the legislatures then go through the sham, as you said, of holding hearings.

They are not going to change the agreement, but rather there will be a commission set up that is somehow going to be representative, we are not sure exactly how, of the legislatures and the Parliament of Canada, that will travel throughout the country seeking a wide variety of opinions on proposals for Senate reform over five years which will then be given to the legislatures and to the first ministers prior to them meeting and deciding whatever they decide with regard to Senate reform. Do you see that as a possible new approach, a different approach that will get us out of this kind of situation we have been in for some years now?

Dr Cameron: To begin with, I was interested that the commission is supposed to be representative of legislatures. That is not what the wording of the agreement is. It is that they will report to the legislatures.

Mr Wildman: Just for clarification, we were told, although it was rather vague, by some of the constitutional experts who were advisers to the Ontario delegation, when they appeared before our committee yesterday, that this is what they anticipated.

Dr Cameron: That is interesting because the public has not been told that. So this is an example of yet another behind-the-closed-door deal. We have two objections to this. We do not think that it—

Miss Roberts: That is not official.

Mr Wildman: No, that is not official. He said that is what he expected would happen.

Mr Epp: There is no agreement that was reached.

Dr Cameron: So we do not have any assurance—

Mr Epp: They are just working things out.

Mr Wildman: Yes. He also told us he did not know how many people would be on the commission, that he did not know how it would be representative. He thought, from his own personal point of view, that there should be provision for ethnic groups to be represented, for aboriginal people to be represented and so on, but if they are going to be legislators—as far as I know, other than the Northwest Territories, there are not a large number of aboriginal legislators in this country.

Dr Cameron: We have a couple of concerns about that. First of all, when we are represented we want to choose our own representatives; we want autonomous representation in a process. We do not want a provincial cabinet choosing who is going to represent women in a process of constitutional change. But also our objection, which is raised in this brief, is that the representation is of provincial governments. What we are saying is that we want a different basis of representation, that we want to get beyond that basis of representation and we want to have our own representatives, chosen by us, working alongside representatives chosen by aboriginal peoples, by visible minority groups. That is a basic democratic objection we have to this process.

1930

Also, in the agreement it is laid out really what the conclusions of this process are. We have not had a period of debate in this country on Senate reform, except perhaps in Alberta. There has not been a debate on that, yet the agreement itself lays out what the conclusions are that the commission will come to. So the process is already determined along a certain route, that it will be reinforced representation of the provinces. We are saying that we are questioning the entire basis of representation, that this is the 1990s and that we are demanding representation for women and for other disadvantaged groups within the Senate and all political institutions.

Our position really is that this is again phoney democracy, that the process is similar to the process that has taken place so far. It may be a bit more public, but the same interests are represented and the same interests will be reinforced.

Ms Oddie Munro: I understand the arguments on representation, but if there is to be an elected Senate, unless you have a formula on the ballot, then of course the electorate would have to determine, and if there are less than 51% elected, then I suppose you could say that you gave it your fair shot. As we do as women in the provincial Legislature, you decide to run and you take your shot, but at least you have opportunity and are recognized. Perhaps the Senate would also have ex officio committees that would also speak to women's issues. The Senate reform process is not written in stone yet, so I think that your comments, to sort of allay your fears, are something we can take note of and take forward to the Legislature.

As a woman, I do not think that—I would say the same thing if I was a native of the country or multicultural. I am English. I would say there are all sorts of opportunities to get involved. The Constitution has gone through a lot of amendments. This is one round.

I guess what we heard here is a frustration with, the process, yes, but what I am hearing is communication back to people. I think you come here with some things that I would like to allay your fears on, because I think there has not been an opportunity to communicate with you. I think the process itself has to have some very tough communication strategy in it, participation, yes, but communication. You should have a copy of the communiqué. You should have a lot of things. I guess that is what I am taking out of it as a member of this committee, that those things—I do not think we need to be arguing about things that really are not an issue, that could have been rectified if you had had more information.

Ms Rebick: That is not what we are saying. We are saying something much more profound than that. What we are saying is that the political—

Ms Oddie Munro: I am hearing things that may be profound too, but I am reacting as profoundly as I can.

Ms Rebick: No, I am not saying that what you said is not profound. I am saying that what you took from what we said is that we are not getting communication, that we are not getting participation. That is not what we are saying, although that is true. What we are saying is that we do not have political power in this country. Women do not have political power and native people do not—

Interjection.

Ms Rebick: No, just a minute. Can I just finish? The political system is constructed to favour—I know because I have run for Parliament—

Ms Oddie Munro: So have I.

Ms Rebick: Okay. To favour people who have money, who have connections, who have the kind of jobs from which they can get time off. It privileges people with privilege, which in this society generally means white males. That is why we have so few women, not because women are not capable of becoming elected, but because it is an élitist system. What we are saying is that has to be challenged.

Since the Senate constitutionally is supposed to counteract the lack of representation in the House of Commons, which is in the Constitution Act of 1867—that is what the Senate is supposed to do—we are proposing a different idea for the Senate, which is, yes, it should be regionally representative, but should also represent the composition of the population in terms of women and minorities, disadvantaged groups. That is a different way to look at representation of the Senate that could give more power to those groups, not in terms of consultation but in terms of decision-making in the country.

It is a radical idea, but we have come to the conclusion that unless we take radical measures to counteract the decades of discrimination, which we recognize in employment, for example, with employment equity measures in the political system, we are not going to have any change in the fact that we still have 11 men sitting up there in Ottawa making the decisions for us.

That is what we are saying, not that we need more communication, which we do and we have been saying that all along, but we are saying something quite new here and serving notice that this is not only the position that we are going to take into the Senate reform, but which we are going to propose to all the other groups that have felt excluded from this process, that we want to see the Senate represent the people of Canada in a different way than just the regions, although we agree with regional representation.

That is what we are saying. Of course you are right: If it is an elected Senate, then there have to be a number of things. There has to be a formula for affirmative action. There have to be methods of giving support to people, for example, who do not have money, all these kinds of things. As we look at employment equity, there is a whole series of measures that we can take to give advantage to the people who are historically disadvantaged. That is the kind of thing we are talking about.

We have not had time to develop a full—nor have we had time to consult all our member groups. Also, we want to develop this in consultation with aboriginal people, visible minorities and the disabled, and we will be doing that over the summer. This is what we are proposing, which is a very radical change in our political institutions. Relooking at the Senate, an elected Senate is a radical change too. Let's look at it in an overall way.

Ms Oddie Munro: Can I have a supplementary?

The Chair: We are out of time. Thank you very much for your presentation. I recognize that it was on very short notice. I am sure we will be hearing from you again as we continue to debate Senate reform for some time to come.

ED RYAN

The Chair: Our next presenter is Ed Ryan. Could you come forward, please. Welcome to the committee. We have allowed 20 minutes for your presentation. We hope that you will give us some time for questions after your presentation.

Mr Ryan: Like the lady before me, I got very short notice. My reason for appearing before this commission or inquiry is that I am an excellent example of why Quebec is on the verge of leaving the Confederation of Canada after being in Confederation for 125 years and being one of the four founding provinces.

A short résumé of my life story will tell the hardships, discrimination and destruction inflicted on me, a Canadian who speaks the French language fluently although I carry an English-sounding name. Even though my first language is English, I or any other person can expect discrimination at any time in any area of Canada except Quebec, often minor or annoying discrimination inflicted to enhance the prestige of the perpetrator among his or her peers or associates.

Moi, je vais parler en anglais parce que je pense que vous parlez mieux l'anglais que le français entre vous.

M. le Président : On parle français. Si vous voulez parler français, parlez français.

1940

Mr Ryan: I am a real Canadian. My father was Irish. My mother was Acadienne. I was born in Bouctouche, New Brunswick, in the county of Kent. Kent was considered one of the poorest counties of New Brunswick and New Brunswick is one of the poorest provinces of Canada. Now I have gone from Bouctouche to Toronto. That was a long, hard road.

I served overseas in the Canadian army for six years and I landed in Britain, Italy, Sicily and Normandy. I returned home and was discharged from the Canadian army on 3 July 1945. After being discharged I returned to Moncton, New Brunswick and started a business. This business was much more successful than I had anticipated, and changes came about rapidly.

I made changes in my business and built a fairly large building, a picture of which you all have a copy of, on land leased from Canadian National Railways. This business operated very well. They would not sell me land, so I was obliged to lease land for 10 years. At the end of the second 10 years I had made excellent progress for that area. The building had no mortgage, I owed no money and I had sufficient capital to operate, but I could not get any way to leave it on that land. I tried the boards of trade.

Many people tried. "No, you have to go." What was the reason? No one could tell the reason, but when I looked around me, I was the only French-speaking person in a town where 42% spoke French and 27% spoke English and other languages. I was called all sorts of names, and every time I went into a place they would say, "I think he's a dirty frog." That is a very serious name that we who speak French are called in Canada, especially if you speak French fluently so that they cannot distinguish that you are English.

However, on 13 September 1968 I made one final attempt to stay in Moncton to keep these two businesses going, but to no avail. I went to Moncton with one of my three-ton trucks to pick up some equipment. I was confronted there by a John P. Schiller, an employee of Canadian National Railways. He gave me a very hard time. He told me to leave CNR property and never return.

I said, "What about my family and the families of the people who work in these buildings?" Employment in this area then was running at 21%. He said, "People like you we have to get rid of." I said, "My family?" He had no concern for my family, no concern for the families of the people who worked in this area. His idea was, "These people are not the kind of people we want on government land."

As a matter of fact, all of us there could speak the French language. He was really enhancing his hatred and the ideas of Leonard Jones at that time. Leonard Jones was well supported from Thornhill, Toronto and Hamilton.

So I was obliged to move to Toronto where, I have to say, I have done real well, although my first night in Toronto looking for a place was not very well received. I was stopped down here on King Street just east of Yonge. I spoke to another gentleman who spoke French. We were speaking in English, but a third person came who did not speak English so we switched to French. Two cops came by. We were standing on the sidewalk. They said: "Where are you from? Have you got identification," and all this. One fellow's name was Girouard and the other fellow's name was French but I forget what.

He looked at mine, Ryan. They said, "Step off the sidewalk," so we stepped off the sidewalk. As the cop walked away he looked at me and said, "Why don't you speak white?"

That is the problem I have faced all my life. In order to speak a second language, you who do, you have to learn 20,000 more words and symbols. It is not a small job. But you have all sorts of discrimination here. I feel that all these commissions can deal with as many people as they want, but they must deal with all of them one at a time. My problems must be dealt with. This lady wants to deal with the whole problems of everybody. That might be great, but we have to have a home to go home to, and that is what most Canadians want. That is what most people need.

I have been associated with Quebec for a long, long time, all my life, I guess, and I have seen terrible things go on there. I shipped from Moncton, New Brunswick on English invoices to Paspébiac, Quebec, and they received on English invoices. Both towns are French-speaking. No wonder people are not satisfied.

Another thing: I feel that, like me, there are many people in Canada who have lost everything they own. Try and get any help from the government. No way. They will not even pay for the damages they cause. I have met 25 people now who have claims against some department in Ottawa. They just say: "Well, hard luck. Goodbye." They can find more reasons for not helping you, especially those who speak another language, French.

I have to support René Lévesque. Réné Lévesque served in France with us. I have to support him that it is impossible unless each individual Canadian is looked after as an individual. The people in Quebec are not that strong on speaking English, they just want to speak French as their first language. That is good. It is good to speak two languages. I have been really pleased with my bilingualism. I now speak quite good Spanish. I just picked up a word here and there.

What I would like to see is all you gentlemen and ladies here see what you can do to get anyone who has a claim against the government to have it settled. The government of Canada since 1968 has just antagonized the people and destroyed their boats, destroyed their barns, destroyed their jobs, destroyed their buildings, taken away their fishing rights and any other little thing it could. They say: "Well, it is the government. You cannot sue them." I can sue the government. My lawyer said: "It will cost you $100,000 to sue the government. Your building is only worth $87,000." What is the problem? Why? I met a man here not so very long ago and the CNR had wrecked his truck. He said to sue for $60,000, and he was told it would cost $125,000 to sue.

We have a country where only a few people have any justice at all. Justice in this country has just about gone. It is so expensive and no one is interested in people like me. I have talked to many people. "Yes, we are sorry." All these are people who say I am right, but it is not worth the problem. A building—you have seen a picture of it—4,800 square feet, not worth the problem of looking after.

That is just about all I have to say to you.

M. Grandmaître : Comment vous sentiez-vous samedi soir dernier lorsque les dix premiers ministres, notamment le premier ministre de l'Ontario et le premier ministre du Canada, ont signé l'entente, si vous voulez, ou ont ratifié, ont ajouté à l'accord du Lac Meech ?

M. Ryan : L'accord du Lac Meech, moi, je peux dire que ce n'est pas une mauvaise chose ; c'est un commencement. Ça va sauver le Québec pour quelque temps. Le Québec va peut-être rester avec nous autres pour cinq ou six ans. S'il ne se fait pas un grand changement au Canada, le Québec va s'en aller. Le Québec a beaucoup d'amis à l'extérieur du Canada. Moi, je veux dire que si le Quebec s'en va demain, le Marché commun d'Europe lui donnera peut-être une association comme aux îles de l'Atlantique. Il sera bien aise de les avoir. Les Américains n'en ont pas beaucoup. Le Québec sera obligé de s'en aller, comme peut-être aussi les francophones du Nouveau-Brunswick et du nord de l'Ontario.

Mr Grandmaître: Just another question. En plus de ça, moi je vous parle de fierté. Je crois qu'en tant que Franco-Ontarien…

M. Ryan : Je ne vous entends pas.

M. Grandmaître : Est-ce que vous m'entendez, là ?

M. Ryan : Oui.

M. Grandmaître : En tant que Franco-Ontarien et député du parlement de l'Ontario, moi j'étais très fier lorsque le gouvernement de l'Ontario a reconnu les droits, a établi des droits pour les francophones, non seulement pour les Franco-Ontariens mais pour tous les francophones en Ontario.

Alors, moi je prétends que le gouvernement de l'Ontario, et même le gouvernement du Canada, a fait des efforts, depuis un certain nombre d'années, pour donner aux gens qui parlent le français des droits et des services gouvernementaux. Alors, étiez-vous au courant que le gouvernement de l'Ontario avait une telle loi ?

M. Ryan : Encore une fois?

M. Grandmaître : Étiez-vous au courant que le gouvernement de l'Ontario vous offrait de tels services et vous donnait de tels droits ?

M. Ryan : Moi, je fais du commerce avec le gouvernement de l'Ontario et ce n'est pas souvent que je le fais en anglais. Ici, en Ontario, il y a beaucoup de services en français qui sont donnés.

Lorsque j'entre dans un bureau, dans une banque, si la personne que je rencontre est contre les Français ou contre les Italiens, c'est de lui qu'il faut que je m'occupe ; c'est lui qui me donne de la misère. Vous avez ici Mr Schiller, c'était lui qui était contre les francophones. Il a fait détruire mon entrepôt.

Ça fait que, c'est le bien-être entre citoyens, pas les lois. Les lois, ce n'est pas une grande affaire. Si les Anglais et les autres ne veulent pas avoir de français dans leur ville, comme à Sault Ste-Marie, on ne peut pas avoir d'égalité.

1950

Mr Cousens: I am interested, are you pleased with the way the process has been followed for the constitutional amendments, the whole thing now as you come before our committee and we are having hearings and we have a few days to do it, the way things were conducted last week in Ottawa, the whole process and the hysteria? What is your feeling about all that process that leads up to what we are doing today?

Mr Ryan: It is like having a slice of bread or having no bread at all, so it is better to take the slice of bread. It is like I came to Ontario and left everything in New Brunswick. They are doing exactly what I did. It is the only route out that I can see. It is not a very good route and it is maybe a route that we do not all like, but it is the only route. My wife cried when she had to come to Toronto, but we did not have a choice. After all the hardship I went through for freedom, my wife did not have a choice. She had to leave Fredericton, New Brunswick, a town she loves. That is not much freedom for six years of my life, and my brother gave his life.

That is the same position that Brian Mulroney finds himself in today, and I blame much of that on his predecessor, Mr Trudeau. Of course, they just let it drift, and if you let a boat drift, it will drift aground, most likely.

The Chair: Thank you very much for your presentation. We appreciated hearing from you.

Mr Ryan: Before leaving, I hope you people will try and help me and everyone else. You are elected. We are a rich province now and every person in Canada who has had problems with the federal or any government should at least be recognized and a settlement made.

The Chair: Thank you. We will take that under advisement.

JAMES McMILLAN

The Chair: Our next presenter is James McMillan . Will you come forward, please? We have allowed 20 minutes for your combined presentation and questions. If you could leave some time for questions, I would appreciate it.

Mr McMillan: I would just like to say to Mr Ryan, thank you for coming to my city, the greatest city on earth.

Mr Ryan: Who are you?

M. McMillan : Je m'appelle Jacques McMillan. Bonjour, mesdames et messieurs.

I have quite a bit at stake in Meech. Number one is my parentage. My great grandmother was full-blooded Ojibway Indian. My grandmother on my mother's side was Pennsylvania Dutch, a British Empire Loyalist who settled the Eastern Townships of Quebec—les Cantons-de-l'Est, for Bernard Grandmaître. On top of that, my grandmother on my father's side was French Canadian, and my grandfather on my father's side was a Scot from Scotland. The donation England gave to Canada three years after confederation, Rupert's Land, was part of the gift that he brought over.

I have a real problem when I come in and I find that we are rushing things through. I am very angry, number one. At one time, King David in the Bible, when he was rushing to run away from Absalom, said, "The king's business demands haste." It was a lie at the time; it is a lie today. When I look and see Mr Peterson and Mr Scott saying, "We must rush through"—nothing done in haste ever accomplishes anything. Right, Mr Cousens?

Mr Cousens: I agree with you.

Mr McMillan: Mr Cousens, remember when we took your party to task when it was in government when we made the statement that you people were charging tax on sanitary pads for ladies? You took it off. That was good of your government. It was a fair government. Of course, they had the New Democratic Party to push them at the time.

Peterson and Scott say that we must go for a quick approval. My grandfather was a master carpenter. He charged one and a half times what the other carpenters down in the town did.

He also took twice as long, but the stuff that he produced lasted and is still lasting today. He has been dead 40 years.

In important decisions like this, we have to go slow and steady. It helped us in the First World War. It helped us in the Second World War. We went slow and steady. We never gave up. Nothing rushed through will ever work. I do not care what Mr Mulroney says. He has been so used to working in the back rooms, in the boardrooms, for the multinationals, and he is trying to do it in government and that is wrong. The haste of Mr Filmon of Manitoba will destroy our nation.

I am really happy that one NDP member in Canada is able to stand up the same way that the old Co-operative Commonwealth Federation used to stand up. They could hold their heads high. Most of the NDP members of Parliament could not have licked Teddy Jolliffe's boots in 1945. Remember they drove Mitch Hepburn's government right out of office, until he had only six members left from a majority government. If the six Liberals who were still left standing had backed the CCF, they would have been the government of the day. That man is a true Canadian. It takes guts to stand against your party. That is Elijah Harper. He truly has guts. He has faults; he admits his faults. Some of us do not.

I look at page 2 of this hurried thing that was taken through, and I look down at number 4 where it says, "Aboriginal constitutional issues: First ministers' constitutional conference to be held once every three years, the first to be held within one year of proclamation; representatives of aboriginal peoples in the territorial...."

I remember a place called Caughnawaga across the water from Montreal. It was a wonderful little native area where they could go and they did not have to be kicked around Montreal. Today, because of the Péquistes being in power in Quebec, you have a shopping centre there. They had to get rid of my people.

2000

If there is to be an honest founding nation of the first nations, my people, through my great-grandmother, were here 2,000 years before Jacques Cartier came up that fleuve St-Laurent. We have a right. One of my brothers is back there. He is an Ojibway Indian and I love that man. He has as much right as the pre-Napoleonic French culture speaking that is spoken in Quebec. Nowhere else in the world is it spoken. He has the same rights. His rights should be taken in this council.

To give Quebec a veto the same way as it used the notwithstanding clause to defeat a ruling by the Supreme Court of Canada is outrageous. If you people do it, you will be responsible. Somehow the old CCFers will come back. They did not die in 1959. They did not fall apart when some of them joined and became the New Democratic Party. A lot of us did not join. There are still Templetons out there who beat George Drew in 1945, there are still Teddy Jolliffes out there. They are real Canadians and they believe in a fair share for every Canadian.

I went to Sherbrooke, Quebec, back in 1964. I went to learn French because I wanted to learn French, not because somebody told me I had to. Our government has been spending a lot of time trying to rewrite history. We have been trying to say that Montcalm defeated Wolfe on the Plains of Abraham instead of the truth, and we have to get back to reality.

Our legal representatives are very naïve and foolish. They believe paragraph 2 on this page. If you believe that, I have some land out in Saskatchewan, a gopher ranch on the South Porcupine River, and I will sell you the land along with the gophers, and you get the porcupines for free. They say:

"In our opinion, the Canadian Charter of Rights and Freedoms will be interpreted in a manner consistent with the duality/ distinct society clause, the proposed Constitutional Amendment (Meech Lake accord), but the rights and freedoms guaranteed thereunder are not infringed or denied by the application of the clause and continue to be guaranteed subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, and the duality/distinct society clause may be considered, in particular, in the application of section 1 of the charter."

What about Bill 101? It was defeated by the Supreme Court of Canada and they used the notwithstanding clause. Do you not think they will use the veto if we give them that power? I ask you to think it out. I do not threaten. You men and women in this room have a tremendous chore before you. The children coming through our schools are going to look back. They are going to see a closed meeting of Meech 2 and they are going to say, "Why did you people, the Legislature of Ontario, allow it to happen?"

We have a great province here. That man came to our province, and if he wanted to put a sign a mile wide in French, nobody would stop him. Yet Mr Singer puts a small sign up there saying, "I want to run my business as a printer," and they charge him, they arrest him. Should this happen in Canada?

I talked to the NDP members who are here, and I am glad you came in. You were not here all the time when that other gentleman, Mr Ryan, was speaking. I ask you, deep in your hearts, to look back, to look back on history. Anything that has been done in this province and rushed through has failed. If you want failure, you will back this Meech Lake agreement. If you want failure, your children will rise up and they will point the finger at you.

I speak to Liberal members of this committee, and Lily, you are from Hamilton. You have beautified your city there. I remember in 1959 when I was invited to go down as a member from the Eglinton CCF—I was the treasurer—and I was invited to go down there as a member, Lily. I saw a dirty city. You people have really cleaned it up. You should be proud of it.

I ask you, Liberal members of Parliament, to think, especially you, Mr Grandmaître. I went down there to learn French because I wanted to. I believe what Rousseau said, "Vouloir, c'est pouvoir." To want is to be able to. I want every Canadian, whether he be French, whether he aboriginal or Ojibway, like my brother here, whether he be English, whether he be Greek, whatever nationality he is, if he is a Canadian I want him to have equal rights.

Mr Ryan was robbed, not by the government, but by a man who is in charge of the CNR. I say he was wronged. Where were the people down there in New Brunswick who are shouting for equal rights now? Where were they? They should have been there behind him helping him. I think in Ontario we have that right, that we recognize that right.

I leave it with you now, because if you people sign Meech I will go to the high schools, and everyone who votes for Meech—we will start the same way as we did back in the 1930s. We were called Canadian crazy fools. We were fools and we took it. We stood and looked them in the face. We said we may be fools, but by 1959 we got everything that we asked for in the Regina Manifesto.

My grandfather was a founding member in Ontario. I grew up in the old CCF. I love every one of those people. As I see how those people gave half of their income in order to see these things happen, I know that the young people of the schools will

be back and will move the same as the young people did in 1930s. They brought it about and we almost took this province. I thank you very much. God bless you.

The Chair: Mr McMillan, could you sit please. There may be questions from some of the members.

Mr Cousens: I appreciate your coming and sharing your concerns. When you say we are rushing it through, the process that we are in now with only several days of hearings, what would you recommend that the Legislature should be doing with regard to giving time to consider these factors? Could you give us some alternative approaches that could be considered?

Mr McMillan: A reasonable alternative? Yes, my reasonable alternative is to move that date past. Move it to September. Give them the summer. Put Meech out so everybody in the province of Ontario can seize what Meech is all about. Most people in the province of Ontario do not know what it is all about. You ask them, "What about Meech?" They do not know. Give our people in Ontario a chance, if possible, a referendum.

Mr Allen: Thank you very much, Mr McMillan. You took me on a bit of a roller-coaster there. I was sort of alternately with you, when you were talking about the old CCFers, and I was not sure about some of those other comments, so I am not sure where I have come out of all that. I was brought up in the old CCF too. My dad ran in the first election in British Columbia and so on, so I know what you are talking about.

Mr McMillan: You knew Bob Strachan, I take it.

Mr Allen: As you are probably aware, this committee, or its forerunner, I should say, spent several months listening to about 287 representations here in Ontario on the Meech Lake accord. We did of course make a decision about that. That part of our decision is behind us. A new part of this new business that we are into right now has to do with the issue of the Senate. That is where there was some movement, if I can put it that way, last week. The Premier did seem to commit us, depending on certain things that might happen in the interval down the road, to the possibility that we would have six fewer seats in Ontario. I wonder if you would spend a moment for me just talking about that part of it. Do you have any particular comments on the Senate that you would like to share with us?

Mr McMillan: I fully believe in our old position on that. The Senate should be elected, it should be equal, it should be responsible to the people of our country.

Mr Allen: Would you do that on a one-man, one-vote basis—that is, that it should be representation by population—or would it be, in your view, representation by regions, so that the weaker regions and the smaller provinces have a slightly larger say than they otherwise would have by virtue of their population?

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Mr McMillan: We have no call against the way they have worked out that portion of the deal. That was well worked out. We believe that Mr Peterson should be given credit. He did work it out that he was willing to give those other seats. There is nothing wrong with that. We would go right along with that.

Mr Allen: I see. The other question that I would ask you is that I think most of us tend to speak of both the world and public issues from where we sit. That is fair game. If you were to imagine yourself to be in a province where another language is spoken, and that language was very much a minority in the North American continent and your government was the only government that fully represented your language group, how would you view the current issues that are facing us in Canada today around Meech Lake and so on?

Mr McMillan: I was in the province of Quebec for five years, sir. I got a good look at it. I know the Cantons-de-l'Est comme l'intérieur de ma poche. I know the Eastern Townships like the inside of my pocket. I find there are problems down there. In fact, I pastored a church in Clarenceville, Quebec. I was to do bilingual work down there. I was doing it, but my congregation was going around Missisquoi Bay, shopping in an English area, because the French people owned the stores in the town. I thought it was wrong. I left the work there.

But I can understand the feeling. I have lived on Greenwood and Danforth in among Greeks and Italians, the two major groups there. I found, when I went in there, the board of education had denied them rights that all Canadians should have been getting. There were 1,100 in kindergarten to grade 6 while there were only supposed to 500. They had 11 jam-packed portables and 90% could not speak English. The teachers used to come in the morning at 7:30 to bring them from their home language into English so they could teach them. Afterwards, they would stay till 5:30 to work with them. It was the greatest school. My kids got a tremendous education in that school. I saw how Anglo-Saxons who were on the school board treated people they thought were going to be shifted into East York instead of Toronto. They did not care about that school. We fought. We got everything we wanted. By the way, our school backed Bill 127. We got Bette Stephenson's eye and she went down and saw it. She rectified everything, sir.

The Chair: Thank you. One final question from Mr Mahoney.

Mr Mahoney: It is not a question. I just want to share a comment with Mr McMillan. My dad was an old CCFer. The threat of his coming back certainly got my attention.

The Chair: Thank you very, very much, Mr McMillan, for your presentation, sir.

TENA GOUGH

The Chair: Our next presenter is Tena Gough. Mrs Gough, you were here earlier today. You know that we have allowed 20 minutes for a combination of your presentation and questions. We hope that you will allow some time for questions. Please begin when you are ready.

Mrs Gough: My name is Tena Gough. I am from Guelph, Ontario. Thank you for the opportunity to speak and also, as you mentioned, for the opportunity to sit in the gallery this afternoon and hear the other contributors.

First, I want to apologize for the second sentence of the written statement that you have before you, where I stick it to you for holding these hearings on a fait accompli, the resolution, and not on the original Meech Lake accord, which I go on to say was passed unanimously by the Legislature without hearings. I was informed at coffee this afternoon and then later that you did have hearings and that it was passed in 1988. My husband agrees to take the blame, since he was the one who was on the telephone yesterday afternoon to the office of your

Chairman, Mr Furlong, and that was the source of our information.

The Chair: I will certainly see that that is corrected.

Mrs Gough: You know better than I do that the Meech Lake accord itself is what has people upset. That is what they come here to talk about. This companion resolution we are considering, in my opinion, does very little to ease concerns. In the first place, does it have any teeth? It is my understanding that it is classified as a resolution, which means it would have no status in law but could exert only moral suasion on future governments. Now, are you going to disabuse me of another misapprehension? You mean I am right?

The Chair: No, you are wrong.

Mrs Gough: That is from the political science department at the University of Guelph, so you fill me in.

Mr Polsinelli: What happens is that if each province and the federal government pass that resolution, the Constitution of Canada is amended according to the terms of that resolution. That is the constitutional amendment process.

Mrs Gough: I find that very hard to swallow after Meech Lake.

Mr Polsinelli: That is the truth.

Mrs Gough: I shall continue. Oh, I do not doubt that you are telling me the truth, but I think the process is going to be extremely difficult—

Mr Polsinelli: Process is another question, but what happens to the resolution is that if it is passed by all the provinces and the federal government, it amends the Constitution of Canada and becomes part of the Constitution of Canada. Now the process is something we can discuss later.

Mr Wildman: In parliamentary process, normally a resolution is not binding, but in this case, because of the agreements made among the provinces and the federal government, once all the legislatures pass resolutions then it means there will be a constitutional amendment.

Mr Mahoney: Mr Chairman, you are not only giving out wrong information; you have lost control of the committee.

The Chair: Yes, I listened to the constitutional experts. You know what the definition of an expert is. Now, can we carry on, please?

Mrs Gough: Your office did not give me that. As I say, that came from the political science department.

The Chair: I am glad to hear that.

Mrs Gough: After I got here I found that you are referring to the ministers' agreement as a companion resolution. I had thought of it rather as an appendage. Again, I am probably wrong. It seemed to me that it was perhaps a lame foot. Now you are telling me it is much more than that. I thought it was maybe even just a shoe and if it pinches, you can take it off. Perhaps I am wrong again.

The Meech Lake accord itself, and this is where I certainly disagree with you, is not only a tight shoe; it is a straitjacket. As members of a Legislature that voted for Meech Lake, you are certainly aware of its contents so you know that in section 41 there is a change to the Constitution Act of 1982 so that unanimous support of all the provinces is required for constitutional change in 10 specific areas, some of which a number of Canadians believe are sorely in need of change. Surely the difficulty in ratifying the accord itself is proof enough that unanimity is an unrealistic and crippling requirement. This is why I disagree with you.

One thing that all 10 premiers, and even the public, agreed on is the need for Senate reform, yet ironically, after Meech becomes part of the Constitution, changes to the Senate will require the approval of all 10 provinces.

I realize that true Senate reform is not a priority in Ontario. With over one third of the population, we have sufficient seats in the House of Commons to ensure a strong voice in running the country. In western Canada, however, Senate reform, the so-called triple E Senate, is a dream, perhaps a pipe dream, but a hope nevertheless for a way to get some federal power into western hands. Ontario ignores this western ambition at its peril. The main argument put forward for the passage of the Meech Lake accord was that it was necessary to do so to keep Quebec in the country. The passage of the accord, with its 10 separate padlocks on Senate change, effectively squelches any hope of real progress in the west's push to get at least a finger on the reins of power through this particular vehicle.

You may have guessed that although I live in Ontario—I have lived here for over 20 years—I grew up in Manitoba. I am not exactly disinterested in the west. Also, since I visit there, I think perhaps I have a feeling for the west that I did not notice in some of the other speakers. They simply do not understand western frustration and western alienation.

In future constitutional talks—and a continuation of talks ad infinitum is the one thing that is assured by this agreement—persons of goodwill, hamstrung by the Meech Lake accord, must not only abide by the generous spirit printed out in this document we are considering, but will have to use a good deal of imagination to come up with some ingenious way to satisfy westerners' demands for more say in their own affairs.

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This afternoon Dr Crispo suggested perhaps the West German model for the Senate. Something different has to be done. Obviously, it is a little bit of a dream for them to have the same number of senators as Ontario, but something ingenious is needed and how you do that with 10 vetoes, I do not know.

Do not judge the mood in the west by the acquiescence of Premiers Vander Zalm, Getty and Devine. Remember that when the voters of Alberta had a chance to vote on a senator, they chose a member of the Reform Party. If you think that the west is just a drain on the rest of the country anyway, I remind you that, besides being a captive market for Ontario- and Quebec-manufactured goods, two of the western provinces, British Columbia and Alberta, over the past 20 years have contributed more per capita in transfer payments than have the residents of Ontario. Now that is per capita obviously. They have smaller populations.

I am told by an economic geographer—actually my husband, and he is always right, you cannot get me on this one—that the four western provinces taken together have been net contributors, not recipients, of equalization payments. It is his opinion also that those four provinces, if independent, would form a viable economic unit. Think of it. They could get along quite nicely without Ontario. Free trade, free everything, but they do not need us. We might need them.

Although I believe that westerners should not have put so many of their eggs in the basket of Senate reform, it is true that

if this first ministers' agreement still holds any weight with whatever governments are in power in 1995—and you tell me that is lots of weight—there is an incentive of sorts for Ontario, New Brunswick and Nova Scotia to get busy with something or other on Senate reform or risk losing some senators. Most of us do not care too much, one way or the other, about a few senators.

The truly offensive part is the fact that Premier Peterson, on his own hook, could throw in six senators, like chips in the pot, without even consulting you, the legislators, let alone us, the public, whom he and you are supposed to represent. I think it does offend you. I ask the question here, thinking you are all as bad as the impression I get sitting back in Guelph. But listening to you this afternoon, I realize that you do not like this system either, where you have to vote along and follow the party.

If the legislators could hear the conversations generated by Meech Lake among ordinary Canadians they would realize that people are fed up with their elected representatives ignoring their wishes. My deep concern is that Meech Lake, with its hammerlock hold on constitutional change—I have not been disabused of that one yet—mires us further in the Constitution of 1982.

This commits us to a parliamentary system that over the years in Canada, as the woman this afternoon pointed out, has become corrupted by the prevalent practice of voting the party line. Legislators look like puppets, bobbing dutifully when the strings are pulled and then hiding from their constituents behind the screen of the whip system. Democracy is short-circuited unless there are free votes in Parliament and in the provincial legislatures.

Increasingly for the average person—you are all good people; maybe we are not there yet—democracy is being reduced to an opportunity every four years or so to trade one dictator for another. Referenda are dismissed as divisive and on really important issues like Meech Lake—and this afternoon the gentleman who is not here was saying on constitutional reform certainly—which the public was against, all three parties vote together. You vote together. We therefore cannot send any of you a message at the polls. We do not like any of you. My vote over the past 20 years has usually been choosing the lesser of three evils.

Do I think that this committee should recommend to all parties that they pass this agreement? Probably. Although it appears to be mainly a public relations exercise, it does spell out laudable objectives. It cannot hurt much and it might even help a little if negotiations are carried out in the spirit expressed in the document.

The pertinent question is, should this committee recommend immediate passage? My answer is no. Since Ontario has already ratified the Meech Lake accord, there is no 23 June deadline for this particular resolution. What is the rush? I read in this morning's paper that the Quebec assembly does not plan to table it until this fall. Will not the Ontario legislative process be further subverted by complying with the wish of the government to push this agreement through quickly with perhaps the hope of influencing the Newfoundland vote? Also, are you not jumping the gun a bit by pushing this through the Legislature when the accord is still in jeopardy in Newfoundland and today, we see, perhaps in Manitoba?

Our leaders say that they have learned some lessons from Meech Lake and there is virtually unanimous consent that the present method of changing the Constitution is seriously flawed. To start with, I suggest that amendments should be introduced one at a time, if they are not interrelated, and voted on separately so that they are considered on their own merits and not on the importance of some companion clause.

Secondly, there is a demand for more input from the people. There is a word for this process. It is "democracy." One way of practising democracy is through public hearings, but of much more importance is the need—I know I am repeating myself and the woman this afternoon expressed it very well, but I wish you would hear it—to have really free votes in the Parliament and in the provincial legislatures.

Perhaps it is no accident that Newfoundland, the last province to join Canada, still retains enough of the spirit of democracy to have a free vote in the legislature on the Meech Lake accord. I am very interested to see how you gentlemen and ladies vote on the companion resolution.

The Chair: We have time for one question, Mr Polsinelli.

Mr Polsinelli: Do I get the pleasure? Thank you, Mr Chairman.

I want to say to Mrs Gough that I think your presentation was well worth waiting for. It was interesting, concise, opinionated, to the point. I must say that in dealing with some of the points that you raise about parliamentary democracy and the party system, I share some of your concerns, even though I understand that many times the party system is required and the whip vote is a necessity in order to get things done. But those are sort of by the by comments.

I wanted to ask you and to chat maybe for a second about the process of Senate reform. You indicated how important you thought that was to the western provinces.

Mrs Gough: I think it is important to them but I think it is a pipedream, as I said here.

Mr Polsinelli: I agree that it is important to the western provinces. I think it is important not only to the western provinces but to all of Canada that we have Senate reform. One of the things that I think was necessary in order to even have a shot at reforming the Senate was to bring Quebec into the constitutional family of Canada.

Mrs Gough: But to bring them in, you have brought in those 10 vetoes.

Mr Polsinelli: No, but I say this. If we had not brought Quebec into the constitutional family of Canada, and that is not a sure thing yet because Meech Lake has not been ratified by those three provinces, but if Quebec does not come into the constitutional family of Canada, there is absolutely no chance of having Senate reform even though the constitutional amendment formula would allow it, seven provinces having 50% of the population.

I do not think Canada, the provinces and the federal government, could even undertake a discussion of Senate reform if Quebec was not part of those discussions. At least having Quebec as part of the constitutional family of Canada, there is a chance of obtaining a reform of the Senate. Before, there was no chance at all and the western premiers have recognized that from day one, outside of the Premier of Manitoba, who has recognized it only recently.

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Mrs Gough: I am not sure how we managed to get a Constitution in 1982 without Quebec. I do not think they were left out. I think they took the choice not to agree and that was their

option. But we did get a Constitution. I think there was an amending formula that for some of the things that now require unanimity, you required seven provinces plus 50%.

Mr Polsinelli: Yes.

Mrs Gough: There was an amending formula. I find it difficult to see why we can go that far but legally cannot go further. Maybe morally it is difficult to go further.

Mr Polsinelli: Morally is what I am talking about.

Mrs Gough: Morally, but is it morally right to agree to some things that I do not think are right in Meech Lake? I know that is not what these discussion are like, but I feel that that unanimity clause is wrong. You have to have it difficult to pass the Constitution. Obviously, it cannot be just like a law. I have gone over time. I am sorry. Can I just finish my point? It has to be difficult, but it should not be impossible. We saw it took extreme, disgusting measures to get all 10 on side and we are not even sure we have got them. We should have an amending formula that is somewhere less than unanimity.

Mr Polsinelli: In 1981-82, when the Canadian Constitution was repatriated from England, the government of Quebec was a separatist government that, in my opinion, no matter what was offered to it, would not have formed part of that repatriation process. What we have now is a government in Quebec that is interested in federalism and that dearly wants to become a moral part of the Canadian family. I honestly believe that if something was not done to bring Quebec into the Constitution—and for that reason I supported the Meech Lake accord from day one—Canada would have suffered great consequences. Now that Quebec is almost there, I think we have a chance of truly unifying this country and moving forward with the other institutional reforms.

Mrs Gough: I am afraid I still disagree with you. With this, I do not think you can satisfy the west. You will try. I am way over time. I am sorry.

The Chair: Mrs Gough, thank you very, very much for your presentation. I certainly appreciate it and I apologize if my office provided you with any misinformation.

Mrs Gough: My husband said he would take the blame.

The Chair: I am not aware of it, but I will certainly look into it. Thank you very much for appearing here today. We appreciated hearing from you.

Mrs Gough: Thank you.

Mr Cousens: It may be a common practice with the Liberals.

The Chair: No. It is common with other parties too. Even your office is not perfect, I am told.

MICHAEL JAEGER

The Chair: Our next presenter will be Michael Jaeger. Would you come forward, please. Mr Jaeger, we have allowed 20 minutes in total for the presentation and we hope you will allow some time for questions.

Mr Jaeger: I will try my best. Good evening, Mr Chairman and fellow members of the special committee. My name is Michael Jaeger and I am the founder of a group called Students for the Reform of Meech Lake. I am a resident of Cambridge, Ontario and currently a law student at the University of Windsor.

I come here today, not to express a viewpoint or concerns that are exclusive to the youth of Canada or to students in particular. I come here today to express my complete exasperation over the first ministers' complete refusal to define or clarify the "distinct society" clause; and to fire a last-minute warning shot that, far from resolving all our constitutional woes, the passage of the Meech Lake accord with or without the companion resolution will permanently entrench constitutional conflict between the government of Quebec and the rest of Canada. I predict that a national schism will emerge between Quebec and Canada over the nature of this clause and its acceptable limits. So if you are Meeched-out now, you ain't seen nothing yet.

As our brief to the committee outlines, the government of Quebec has attributed to the clause recognizing Quebec's distinctiveness a meaning which is incompatible with the interpretation expressed by the government of Ontario and other supporters of the accord outside Quebec. I am cognizant of the fact that a legal opinion signed by six experts regarding the nature of this "distinct society" clause was appended to the Meech communiqué and I do not quarrel with that opinion in any way, except that it was undertaken in a legal vacuum.

What must be kept in mind is that, for whatever reason, Premier Robert Bourassa and his chief constitutional adviser, Gil Rémillard, who is a top constitutional expert, do not share the views expressed by these esteemed experts. At the beginning of the recent first ministers' conference, Premier Bourassa commented that Canada's top legal experts all agree that the "distinct society" clause will not undermine the charter or give Quebec additional legislative powers. Coming out of the conference, Premier Bourassa commented that the opinion had no more legal weight than a newspaper editorial and that Quebec did not endorse the opinion. Other senior Quebec officials were quoted as saying that Quebec will be free to argue the contrary position.

By looking at page 2 of our brief you will see that this is precisely what Quebec will do before the Supreme Court of Canada. Unlike the government of Ontario view, Premier Bourassa himself has commented that the "distinct society" clause will allow or facilitate the permanent enactment of Bill 178 type legislation without resort to the politically volatile "notwithstanding" clause.

So this danger is not merely a pronouncement made by critics of the Meech Lake accord but is actually a view shared by the chief benefactor under the accord, the Premier of Quebec, who will give the undefined "distinct society" clause its political content and direction. In a sense, Bill 178 is the spirit of Meech Lake in Quebec's eyes.

If the Supreme Court affirms this view, then the creation of two constitutions, a constitutionally distinct Quebec, will emerge: one constitution for Quebec's distinct society and one constitution for the rest of Canada. If the Supreme Court rejects this view, which is quite possible and even probable, then Quebec will find itself humiliated under Meech Lake.

In short, grandiose expectations have been built up in Quebec over the nature of this clause and, if they are rejected, Quebec will be no more morally bound to Meech Lake than it was to the 1981-82 agreement. That is the end of the day for Meech Lake and a reality that all first ministers, and you as members of this committee, will have to face if Meech is passed.

As for the so-called grey areas of the division of powers, those areas of jurisdiction not specifically listed in the Constitution in 1867, the legal opinion attached to the accord does not preclude the possibility that Quebec will acquire in future new powers not given to the other provinces by virtue of its unilateral ability to preserve and promote its distinct society.

Both Premier Bourassa and Gil Rémillard have commented in the Quebec National Assembly that section 2 of the accord will allow Quebec to acquire jurisdiction over telecommunications, banking and even treaty-making. Textually there is nothing in sections 91 and 92 of the BNA Act to prevent this other than perhaps the now-limited power of Ottawa to enact laws for the peace, order and good government of Canada, which will now also be subject to section 2 interpretation.

Overall, I think it is naïve to assume that the passage of the Meech Lake accord, with or without the companion resolution, will solve once and for all the ills of Confederation. It is our view that despite whatever laudable and sincere objectives the first ministers may have had in mind when they drafted the Meech Lake accord, the accord as is will not permit Canada to go ahead and deal with other pressing issues of the day, such as the environment, or other constitutional matters, such as Senate reform. Rather, because there is no true consensus among the architects of Meech Lake regarding the overall nature, purpose and parameters of the "distinct society" clause, the passage of Meech Lake will lead Canada into a bitter national schism between Quebec and the rest of Canada over the parameters of this clause.

While I may sound pessimistic and cynical and display a lack of trust in our elected leaders, I am optimistic that I am being realistic. Please save me the liberty of saying I told you so.

Mr Allen: Thank you for coming, having spent a good length of time obviously and some hard thought on the implications of the Meech Lake accord, the charter, the division of powers and all that stuff that goes into Canadian federalism.

If the consequences were likely to be so disastrous, why do you think that so many of those experts whose opinions were sought and were expressed in the legal attachment to the document wrote as they did and were not as concerned as you about the impact of Meech Lake with the "distinct society" clause or with its potential impact on the charter?

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Mr Jaeger: Once again they have undertaken their analysis in a legal vacuum without reference to the comments made by those individuals who will be empowered to give those provisions of the accord, the "distinct society" clause, its meaning, its political content. They have done that analysis in a complete legal vacuum. I do not deny the validity—

Mr Allen: But surely, if I might just interrupt, they are persons not only learned but experienced in the law. They are used to assessing legal positions vis-à-vis real political situations. That is their business. So even though there was not an immediate context of a controversial piece of legislation or an actual controversy, surely you cannot simply write them off as inexperienced in dealing with the reality of politics vis-à-vis the statements of the Meech Lake accord.

Mr Jaeger: Well, I do not, but I do believe that they have underestimated the potential that judicial interpretation can have on constitutional development, specifically when there is a certain dynamic of political determination behind it, which seems to be in Quebec at the moment, for better or for worse. It seems to be nation-building.

Mr Allen: I have seen this argument on a number of occasions by Ramsay Cook and others, for example, that you have to interpret what the charter means or the "distinct society" means or what the powers, so-called, given under the Meech Lake accord are in terms of what Mr Bourassa said when he went back to the National Assembly after the Langevin meetings, or what he or Mr Rémillard has said at one time or another, or their opinion vis-à-vis the judgement of the learned judges.

Would one not normally expect that a political leader who was going to a set of meetings in order to get something would come back and try to put both the best and the strongest face on what he got? And one would read it in that accord. Mr Bourassa's and Mr Rémillard's opinions of what they got will have absolutely no weight whatsoever in the Supreme Court. Would you not agree with that?

Mr Jaeger: I definitely agree with that. But if their assessment is rejected, I feel they have built up such grandiose expectations over the nature of this clause—maybe they themselves firmly believe what they have said, just like Premier Peterson has—that if they do not get exactly what they say, Quebec will be humiliated under Meech Lake. It is going to be a continual escalating battle over the nature of this clause.

This whole Charest committee process was undertaken on the false assumption that there was a complete agreement over the nature of this clause. There is not. This historic consensus is spurious. There is the outward prima facie belief that there is a consensus. They all signed the document, but inwardly each has interpreted that clause to suit his own political constituency, and everybody cannot be right. So it is not all over. I think we are going to be at this for quite some time.

Mr Allen: There is no question, of course, and none of us can fool ourselves, that Meech Lake or any other of the stopping points along the way in Canadian history resolved the ongoing dialogues, dialectics and conflicts between the various components of the Canadian Confederation. I am not sure why one would expect that of Meech Lake any more than any of the other of those arrangements.

If you were to look back on Canadian history, you would perhaps recognize that there have been some major turning points in Canadian history that have come simply as a consequence of the cumulation of judicial judgements, and that in some respects perhaps a lot of the fuss around Meech Lake is relatively inconsequential, because where the judges take us is where the judges will take us, as they did after the Macdonald Constitution of 1867. We ended up by the turn of the century with a very decentralized Constitution rather than the centralized one Macdonald started out with.

Mr Jaeger: I do not disagree with that assessment at all. It is just that if Quebec—

Mr Allen: If that is the case, how can one really, with any real firmness at this point in time, make any very clear, hard and fast judgement about the impact of, say, the "distinct society" clause in the hands of Supreme Court judges?

Mr Jaeger: I was not making any hard and fast judgement at all. I am saying it could go either way. I certainly hope that it goes our way, the way that myself and yourself probably agree upon. I do not deny the validity of Peter Hogg's assessment,

etc. These guys are experts. I do not deny that. I think it could go either way. That has not been determined. The situation is fluid. Quebec could be humiliated under Meech Lake if it does not meet all these expectations, and if it does not meet those expectations, they are going to be right back at the bargaining table. All indications are that Quebec is going to be right back at the bargaining table this fall, demanding additional powers over telecommunications, etc.

Mr Allen: That is an old agenda, of course.

Mr Cousens: I appreciate as well your coming and your openness, your candour. I am worried at your prognosis for Canada and over what is coming. You talk about a bitter national schism over the "distinct society" clause. A lot of thought has gone into that kind of thinking. May I ask you, to what degree is the process we are following in the Ontario Legislature with these hearings, in which you are now participating, going to be helpful or a detriment to the long-term benefit of this clause and other parts of Meech in future ratifications?

Mr Jaeger: It may help ensure the legitimacy of the agreement overall, but I do not think—once again this whole process right here has been thrown together in a very ad hoc fashion. I just heard about it on the radio, phoned in and just happened to get in. But the average Canadian—I hear the process is going to be over next week or something—really is not going to get to express his views, only those who are actively involved in the debate. It will add a semblance of legitimacy to the accord, but once again in six months' time there is going to be a big debate over what this clause means, what its limits are, and it is going to be continual fighting. It is not solved once and for all and it will not necessarily be dialogue. It could be a bitter schism.

Mr Polsinelli: Thank you for your presentation. You are very concerned about the "distinct society" clause and you indicate that the legal opinion appended to the recent constitutional agreement was prepared in a legal vacuum. The Supreme Court of Canada, as you know, dealt with the constitutionality of Bill 101, and in dealing with the constitutionality of that bill it assumed in part of its judgement that the "distinct society" clause was in fact enacted and it made some pronouncements on that. What do you think of their opinion in dealing with the constitutionality of Bill 101 with respect to the "distinct society" clause?

Mr Jaeger: In the Singer decision, I guess it was, they took into account that Quebec had special needs by virtue of section 1, whether Quebec could invoke reasonable limits on a charter right, which was freedom of expression, but Premier Bourassa himself has made the comment that—

Mr Polsinelli: But we talked earlier about the accord at one point or another having to adjudicate what the "distinct society" clause means. I am saying that when they were looking at the constitutionality of Bill 101, the Supreme Court of Canada—mind you, even though some of its comments were obiter—said certain things with respect to what "distinct society" means. Do you agree with them or do you not agree with them?

Mr Jaeger: I do not deny the statement that Quebec is a distinct society, but it certainly is one thing to put it in a preamble and another to put it into an interpretative clause.

Mr Polsinelli: No. What the Supreme Court of Canada said in dealing with the constitutionality of Bill 101 was that if the "distinct society" clause had been part of the Constitution, they still would have ruled Bill 101 unconstitutional.

Mr Jaeger: I do not believe the Supreme Court has made that statement.

Mr Polsinelli: You should read the judgement.

Mr Jaeger: I do not recall seeing that statement at all.

Mr Polsinelli: You read the judgement and you will find that in dealing with the constitutionality of Bill 101, the Supreme Court of Canada, in part of its judgement looked at the Constitution of Canada and then at a certain point assumed that the "distinct society" clause had been part of the Constitution, and it said that if the "distinct society" clause had been part of the Constitution it still would have ruled Bill 101 to be unconstitutional. So what I am saying to you, if you have not read the judgement, is that you should check the judgement and you will find certain pronouncements already there by the court.

Mr Jaeger: It would seem rather incredible that the Supreme Court of Canada would be commenting on a matter that was currently before the legislatures. I cannot see how that is possible. I know there were certainly statements made to that effect.

Mr Polsinelli: I just suggest that you read the judgement.

Mr Jaeger: I have read the judgement and I do not recall seeing that.

Mr Polsinelli: Read it again.

Mr Jaeger: What are you trying to establish by that point?

Mr Polsinelli: What I am trying to establish is a very simple thing. You are very concerned about the "distinct society" clause and what it means, and you are saying that the legal opinion that has been given by six top constitutional experts is made in a legal vacuum. I am telling you that the Supreme Court of Canada, the highest judicial body in the land, has already made a pronouncement with respect to the "distinct society" clause and you are telling me that you have not even seen it.

Mr Jaeger: They do not make their decisions in a legal vacuum. I said these experts do. The Supreme Court of Canada considers everything before it and it will also include the statements made by Premier Bourassa and Quebec's needs to preserve and promote its distinct society. What the government of Quebec feels it needs to do is to further repress anglophone rights. It is a simple fact. That is what they want to do with it. I am not saying they are going to succeed with it. That is what they want to do. They have indicated their intent to do this, literally, explicitly, in the National Assembly. What more proof do you need? The fact is, there is no consensus here.

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Mr Wildman: I want to thank you for your presentation and just ask you if you are aware—I think you probably are considering the research that has obviously gone into your work—that this Legislature has already ratified the Meech Lake accord, so that the work of this committee, whatever its value, does not impinge upon this Legislature's view of the "distinct society" clause.

Mr Jaeger: Exactly.

Mr Wildman: I appreciate your presentation, but in terms of its having a great deal of weight on what this Legislature might or might not do with regard to the clause that is of most concern to you, it is somewhat irrelevant.

Mr Jaeger: Maybe it will help prepare the Legislature for some day when we have to remove this clause from the body of the Constitution and insert it where it properly belongs, which is in the preamble to the Constitution and not within the body of the text. This "distinct society" clause is not stuck at the back somewhere in an obscure section. It is right in the front. You open the Constitution—things are going to happen.

My prediction is that this is not resolved and that it is not going to be some kind of a Pollyannaish endeavour towards dialogue and this sort of thing. I think there is a real power struggle and that this is what this Meech Lake accord business is all about. Quebec wants more powers and instead of explicitly giving it to them, we have done it through this vague reference to a constitutional clause.

Mr Wildman: I just want to comment that surely you would agree that constitutions generally are not static but dynamic. The struggle that you refer to, which I agree has been part of Canadian history since before 1840, will continue no matter what happens.

Mr Jaeger: I agree, but two sovereigns cannot co-exist in the body of a single state. That is what is going to be attempted by the government of Quebec.

The Chair: On that note, thank you very much for your presentation. We appreciate that you were able to prepare on such short notice. I personally hope that your predictions do not come true, but time will tell.

Mr Jaeger: I hope they do not either. Can I ask the committee, Mr Chairman, that our brief to the committee be appended to the proceedings, the transcripts?

The Chair: That is a decision the committee will make when we make our report. I doubt it. It will be in the record of these proceedings.

ROBERT CAMPBELL

The Chair: Our next presenter is Mr Campbell. Would you come forward please. Welcome to the committee. We have allowed 20 minutes for a combined presentation and questions. We are ready whenever you are.

Mr Campbell: I must first apologize for failing to provide a copy of the transcript of my remarks. They are presently in handwritten form which I believe I can have ready in typed form tomorrow, if that will be—

The Chair: If you read it it will be in the record and we will get it all in a typed form, so it will not be necessary.

Mr Campbell: Very good. In submitting the following observations on the legislative agreement signed by the first ministers last week, I speak only on my own behalf. I am a solicitor in private practice in Toronto. I am not a member of a political party. I regard myself first as a citizen of Canada and second as a resident of Ontario. Despite the difficulties encountered, I approve the concept of a bilingual Canada as a rational solution of the nation's official linguistic duality. I approve the objective of a reasonable and honourable accommodation of the aspirations of Quebec within the limitations of the present Constitution of Canada.

Nothing of what follows will be new to you. Every point will have been made, every argument presented and every objection recorded. In short, everything will have been said before. Why, then, have I made the decision to inflict upon you what may well be an exercise in repetition? In answer, I can only say that I feel compelled, at the risk of boring you, to state my views as a concerned citizen. In recompense, I shall endeavour to be brief.

As to the terms of reference of this committee, I am aware that the Meech Lake accord was approved long since by the Legislature of this province. While I take it that the committee's terms of reference are restricted to the consideration of and duty to report on the legislative agreement of the first ministers, I would suggest to the members that it is impossible to avoid contemplation of the Meech Lake accord itself and of the process by which it came into being. The participants in the Meech Lake accord, and especially the Prime Minister, must accept responsibility for the nature of the negotiations.

The secrecy of last week's conference of first ministers was a continuation of the same conspiratorial process that produced the Meech Lake accord and the Langevin agreement. Particularly noted is the cynical timing of the conference close to the expiration date of the ratification process. The conference could and should have been convened long before. I shall refer to these circumstances later.

The accord was, so to speak, the result of an ostensible bargain between the federal government on the one hand and the provinces on the other. Canada had a right to be represented in these deliberations. To all intents it was not. No one spoke for Canada; not the Prime Minister whose duty it was to do so, not the premiers, though they had a duty to look beyond the provincial boundaries to the country as a whole. In the absence of leadership by the federal government, the premiers had a responsibility to withstand the dismantling of Confederation and to recognize the indispensable necessity of conserving the powers of the federal government.

Subsequently the Meech Lake accord, with inadequate consideration, was supported by all parties in Parliament, leaving those opposed to the accord a constituency without representation. Opponents of the accord who deplored its effect in weakening the federal government were ignored or treated as pariahs. The chief spokesman of the federal government referred to the accord as being free of egregious error, as if the document were some kind of examination paper.

As to the part being played by this committee and its consideration of the legislative agreement, the shortness of time allotted to the committee for its hearings makes obvious the conclusion that the committee's work will of necessity be perfunctory and incomplete. However diligent its members and sincere their intentions, the committee cannot hope to deal adequately with this important matter within the allotted time. Thus, these are not public hearings in the true sense, when there has been inadequate time to give public notice of the committee's sittings and to allow for the preparation of other than hastily prepared submissions. The shortcomings of this brief are due in part to this limitation.

As the legislative agreement imposed no time limit and there is therefore no reason for undue haste, one cannot help but question the wisdom of the Legislature in imposing an unrealistic allowance for hearings. I would respectfully request that the

committee, in submitting its report, consider requesting a reasonable extension of time for the continuance of hearings.

Returning once more to last week's conference of first ministers, the public has an attitude of helplessness in being presented with a completed agreement arrived at in secret negotiations. Particularly to be deplored was the manipulation of public opinion. As noted above, the first ministers' conference was not called until the 11th hour, the atmosphere of crisis launched with the Prime Minister's statement that Canada is at stake. The public is left with the unmistakable impression that the conference had as much to do with the political futures of some of its chief participants as with the matter of constitutional reform. Negotiations were conducted in a breathless atmosphere of labour-style negotiations and references to deal-making. Particularly repugnant were reports of instances of intimidation, vilification and obstreperous behaviour, quite out of place in a gathering of ministers of the crown. The tactics of some of the participants in isolating and excoriating the dissident premiers were offensive and demeaning. Under the circumstances, the dignity and integrity exhibited by the Premier of Newfoundland was readily apparent.

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The Meech Lake accord—I apologize for this digression. I realize that technically you might take exception to remarks on the content of the accord, but I crave indulgence in this respect. The Meech Lake accord concerns the federal powers under the Constitution. The legislative division of powers between the federal Parliament and the provinces in the British North America Act of 1867 under section 91 and section 92 made provision for a strong central government responsible for matters of national interest and gave power to the provinces over matters of local interest, including property and civil rights. The founding fathers chose to confer the residual legislative power on the federal Parliament rather than on the provinces, in direct contradiction to the example of the American union, which left the balance of legislative jurisdiction to the states. It was realized by the founding fathers that only the central government could ensure the continued existence of the former colonies as an independent nation. In this way, the new Dominion was able to resist the intrusive influence of the expanding neighbour to the south. In this way also, the new Dominion was able to forge the east-west political and economic access necessary to bind its provinces together.

In the years following Confederation, the federal power waxed and waned through judicial interpretation of the application of legislative powers, through Canada's participation in two world wars, under the influence of economic crises and through federal and provincial agreements. Notwithstanding this experience, the same division of legislative powers was incorporated into the Constitution Act of 1982, subject to the conferring on the provinces of certain new powers over non-renewable and other resources.

The federal powers have been progressively eroded since the present federal government took office in 1984. These years have seen the withdrawal of federal policies and initiatives in many fields. I make specific reference to the national energy policy, the Foreign Investment Review Agency, the selloff of crown corporations, deregulation and the cutting back of social security programs. The free trade agreement entered into by the present federal government, implemented without a mandate from the electorate, has left this country naked before its economic enemies. It has deindustrialized Canada, or is in the process of doing so. It has given a foreign country a vested interest in the depletion of Canada's sources of energy, contributed to the destruction of our other natural resources and undermined our social security system. It has made regional development almost impossible.

The effect of the Meech Lake accord weakens the federal government further by limiting the federal spending power and permitting provinces to opt out of national programs with compensation. Meech Lake greatly reduces the capacity of the federal government to build and maintain a strong and united Canada with a true national identity. The federal government will be reduced, as it has been in the Meech Lake negotiations, to the status of a referee among warring principalities.

The further devolution of federal power that has taken place, or will inevitably be requested, under the Meech Lake agreement is with respect to the matter of immigration and the right of nomination of senators and Supreme Court justices, which are all reductions of present federal powers, as others have pointed out.

In this connection, I refer to an article in the Toronto Star of 12 June by J. L. Granatstein, which suggests that the passage of the Meech Lake accord will not end Quebec's demands for a still greater share of the federal jurisdiction. It is common knowledge that several important Quebec voices have spoken of the necessity of controlling communications and foreign policy. Having regard to the present Ottawa government's policy of abdicating power to the provinces, they, like greedy suitors, will have reduced the Parliament of Canada, if this process continues, to a client debating society.

With respect to the matter of Senate members that is referred to in the constitutional agreement under consideration before this committee, Mr Peterson has obliged Ontario to surrender 25% of its seats in the Senate of Canada if Senate reform is not agreed to within five years. The other day when addressing this committee, Mr Scott, if I correctly recall his comments, characterized this offer of Senate seats as significant in achieving agreement among the first ministers but insignificant in actuality because the Senate at that time would still be an ineffective body. But constitutional changes take place slowly. It is not difficult to foresee that Senate reform by 1 July 1995 may not occur and that after that date Ontario's representation will be reduced to 18 members in a chamber of 104.

The federal government has already appointed its first elected senator from Alberta. After 1 July 1995, it is not unlikely that Senate elections will become general and the legitimacy of the Senate as an elected body will increase, at the very time that this province's influence in the Senate has decreased. I suggest that the Ontario government's anxiety to ratify the constitutional agreement by 23 June does not allow sufficient time for reasoned consideration of the implications of this matter.

As noted above, I suggest that the committee might consider requesting an extension of the time given for its deliberations and of the date of ratification of the legislative agreement and that it might invite briefs and opinions from constitutional experts, political scientists and others on the question of reduced Ontario Senate representation.

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I apologize that this brief is incomplete. I have not dealt with other matters of the Meech Lake agreement, although, as I think I mentioned before, there are matters in the agreement itself and these refer to the veto provisions in the agreement, native rights and other matters. That is my submission.

Mr Epp: Mr Campbell, I appreciate very much your coming before the committee. I am just wondering whether you are cognizant of the importance of our doing something here legislatively as in passing this motion, which would give a signal to Manitoba and Newfoundland particularly, those two provinces—and also, as you know, New Brunswick has not passed the Meech Lake accord—with regard to meeting some of their concerns for Senate reform.

The Premier has made a commitment, as you know, but it would carry a lot more weight if there were legislative support for that, and before 23 June. As you listened to Mr Scott the other day, which you said you did, that is the crux of the urgency to passing this. I am just wondering whether you want to acknowledge at this time that it is important to give those signals to those people. Being a person who was born in Manitoba, I know some of the concerns of the west and I think I am trying to understand the concerns that Newfoundland has and that other regions of the country outside Quebec and Ontario have. I am just wondering whether you want to acknowledge those concerns and thereby acknowledge the urgency of getting this through by 23 June, as you have indicated.

Mr Campbell: My comments about that would be simply that it is almost impossible to contemplate, I suppose, in the final analysis the rejection by this committee of the legislative agreement and, along with that, the time limit. Does that not put everyone in a most peculiar position? If I understand your question, what you are really asking me is, am I aware that there is only one possible outcome of these hearings? In other words, I think it goes to the very root of the whole process. We have a situation in Meech Lake and its consequences that is so inevitable that the nation and all its participants cannot conceive of incurring the risk or the dangers of rejecting this agreement.

I acknowledge all this, but does that mean that the purpose of this present committee is an exercise in futility? Why are we here? Why are representations being asked for? Is it possible for anyone, say, in my position or any of the other people who submit briefs, to take any position that calls into question this agreement or specifically the content of the legislative agreement?

Mr Epp: No, I think all of us will agree that the Meech Lake talks and the way they were arrived at, the secrecy and so forth, were not something we would want to be associated with. I think all of us would want to improve the process, and we would like very much to have a lot more time to discuss matters here. There are certain constraints on us, and we cannot change the fact that what is happening in Manitoba, what is happening in Newfoundland and what is happening in New Brunswick, for that matter, has to occur by 23 June. That was arrived at three years ago and it was arrived at through something that was included in the Constitution back in 1982. We cannot change that, and I am not sure I want to start negotiating that differently, but that is the way it is and we have to play by those rules, whether we like them or not.

So it is important, from the way I feel, and I think it is important from the way many of the legislators in this province feel, to give a signal to Manitoba and Newfoundland that we do ascribe to the philosophy and to their concerns that they want change. That is why we are acting as quickly as we are. If we were not concerned with Manitoba and Newfoundland, we would just say: "Look, we will do it some time in the future. We have three years to do it." The Premier is very concerned. As you know, he has indicated this time and time again, and one way to do it is through words. Another way to do it is through actions. We have a chance to do it through actions, and that is what we are trying to do.

Mr Campbell: I acknowledge all of that. Would it not have been within the realm of possibility to have had this whole process engaged in long before the expiry date of the ratification required of the provinces rather than to wait, as was done, until a late date and leave insufficient time, even in matters that take into account the process we are engaged in here, to consider matters that should be important? They are constitutional matters. They will presumably affect the government of this country for many many years.

The Chair: We are out of time. I would like to thank you very much for appearing before the committee. Just for your own information, however—I do not know whether you know this or not—this committee has been reviewing Senate reform. We have had experts, political scientists and historians in here since February, so it is an ongoing process with us. This limited period beginning, I guess, this week to the end of the week was a result of the motion and a result of the communiqué signed on Saturday, but our committee mandate has been to review Senate reform, and we have been at it since February. I just thought you might like to know that.

Mr Campbell: May I ask, did any of these opinions deal with—

The Chair: Not specifically the giving up of the six seats, no. We were just talking about Senate reform generally. Certainly we have never addressed the specific problem of giving up six Senate seats in five years. That plan was never discussed, but we have heard from representatives of the western provinces who have come before us and made presentations, we have heard from senators and we have heard from political scientists and historians in Ontario who are noted experts in the area. I guess with all of this, we could expect to continue that process past next Wednesday. You mentioned that you thought we should bring in the experts, and I thought I should advise that we are already doing that, but we have not addressed the issue that is in the communiqué.

Mr Campbell: Yes, I acknowledge certainly that I would have anticipated that, as you say, the committee had been well advised through opinions. I was surprised that the committee would deal with a new matter that had so many implications without thorough advice. This is something that puzzles me.

The Chair: Thank you very much for appearing. We appreciate your comments.

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JOE ARMSTRONG

The Chair: Our next presenter will be Joe Armstrong . We have allowed 20 minutes for your presentation. We hope you will allow some time for questions. Please begin when you are ready.

Mr Armstrong: Thank you for permitting me a moment to speak to you. May I begin by saying how delighted I am to see Lily Munro here. She was a very fine Minister of Culture and Communications when I was involved with the Ontario Heritage Foundation.

I am going to speak to you very briefly because of the time constraints and because of the time available for this presentation. I only really learned of this opportunity this morning.

In introducing myself to you, I come from a family which in 1993 will be celebrating some 200 years in the county of York. In this context I personally will celebrate as the fourth generation in my family of military service, public service or public life in the service of Canada and/or Upper Canada. So I am one of the old family legacies of Ontario.

My particular interests before this committee are those of heritage and history. I am the author of the book From Sea Unto Sea/ Art and Discovery Maps of Canada. That is this book. I have been involved in Canadian heritage and the unity of Canada for many years. I am also the author, in both French and English, of the book Champlain and have a comprehensive knowledge of French history as it pertains to the discovery period of our country.

Finally, by way of introduction, I have also been involved in the Meech Lake process since 1984, both as an historian and a contributor to the Meech Lake accord process. Briefs have been submitted as follows: a brief to the Senate in 1988, a brief to the government of Ontario in the same year and also a brief to the Charest committee.

During this period, since the constitutional renewal process began on 6 August 1984, that is, the speech that was given at Sept-Îles by the Prime Minister of Canada, attributed now, I believe, to Lucien Bouchard, I have compiled and researched a record of over 6,000 documents and articles on the Meech Lake accord.

In addition, I have now read and have in my library some 14 books that have been written, as well as many more that make reference or deal in detail with the accord. While not a lawyer, I think I can say that I have more than a passing knowledge of the Meech Lake accord tragedy.

My position is—and I wish to make this absolutely clear—that I am opposed to the Meech Lake accord. Moreover, I do not accept the Charest committee's work as democratic or legitimate. As admitted by its chairman—I will deal with this in a few minutes—it was not only hastily convened but carefully orchestrated as to input and result. I hope what I am hearing today here has not already precluded that a decision has been made as to the result of this committee.

In summation, I have seen no reason to change my position three years ago as tabled in my brief to the Senate of Canada and before this government in writing. I said at that time:

"If allowed to slither by unaltered into law, the Meech Lake accord will infect and fester on what then, on final passage, will only be the remnants of a vibrant national conscience. Historically and philosophically, this June 3, 1987 surrender to a crippled-vision consensus concocted in camera is a radical departure from the magnificent legacy of our nation."

I would like to suggest to you that there have been, in my view, approximately three phases to the Meech Lake accord. The first two phases, I believe, we are largely through. The interpretative phase I describe as the red herring phase. What does Meech mean? Answer: We still do not have a clue what Meech means as to powers conveyed or such things as the distinct society.

We have a classic example with the Premier's adviser, Dr Hogg, of York University, who in his summations and public papers has said there is no problem with the accord unequivocally. Yet when one gets to the details of his own book on the subject, as I shall show you in a minute, there is reference and arguments to possible problems. We have had this kind of trouble throughout the entire Meech Lake accord process.

A second example, of course, is the "distinct society" identity argument. Notice I use those two words. They both appear in the Meech Lake accord.

The second phase we have dealt with has been what I call the propaganda phase. An example is that those who reject Meech are bad Canadians, meanies. In this phase, the rejection of Meech has been institutionally and politically promoted and deliberately misinterpreted as a rejection of Quebec by English Canada. Aboriginal peoples, women and territorial residents of the Yukon and the Northwest Territories have all been lumped in to this collective abuse. I suggest this manipulation of Canadians is a national disgrace deserving unqualified censure.

We are now, I believe, in the heritage phase, which is quite simply, is Canada a democracy? What of Canada's international image as a champion of freedom and democracy?

Time does not permit me to go through the many issues regarding the Meech Lake accord which one could debate ad nauseam, but I would like to share with you some insight with regard to such things as the distinct society. The "distinct society" phrase first appears—and I think it can be traced quite accurately and succinctly—in the draft agreement in the Constitution, the proposals by the government of Quebec released in May 1985. I cite as the source Canada: The State of the Federation, 1985, from the Institute of Intergovernmental Relations, Queen's University.

The draft agreement in the Constitution I am citing is of the Lévesque government, and it is my suggestion to this committee that we have been happily marching to a semiseparatist agenda from the very first moment, on 6 August 1984, with the Lucien Bouchard writing of the speech wherein the Prime Minister's commitment was made to Quebec. For example, the very phrases of the "distinct society" are to be found there.

I am reading from the separatist papers, from the Lévesque government of Quebec: "Where it has acquired all the characteristics of a distinct society, the distinctiveness of the people of Quebec goes far beyond the question of language. Language is the origin and at the heart of that distinctiveness."

I do not wish to labour the point but I simply want to point out to you that historically the foundations of where this phraseology comes from is intrinsic and important to our understanding of what Meech is all about.

There has been, as you know, tremendous argument as to the implications of the Meech Lake accord and what it means. Senator Murray has suggested and others—the six attorneys, for example, who have in part themselves been equivocal on the subject legally—have given their opinion as comfort indexes to the communiqué that has been signed.

I have suggested that there is a problem. I am reading now from a letter that I wrote which was an editorial letter in the Toronto Star:

"Let's assume that the pro-Meech Lake accord fan club led by Senator Lowell Murray et al are 100% right; that there is nothing to worry about; that the clause in the accord that refers to the role of the government of Quebec 'to preserve and promote the distinct identity' is merely interpretative, ie, only the business of the Supreme Court of Canada should any dispute arise.

"If this is the case, then will someone please tell me, if the accord is passed, unbundled or otherwise, how the Supreme Court of Canada would interpret conditions in Quebec now that Bill 178 is the law. Thanks to the 'notwithstanding' clause, Bill

178, which is obviously in conflict to the Charter of Rights, as was its predecessor, Bill 101, is now nevertheless valid.

"Quebec's Bill 178"—and this is my point—"has become a part of Quebec's distinct identity. So if Meech flies as the law of the province, what is to prevent the Supreme Court from ruling that further language restrictions and other repressive legislation are not consistent with this distinct identity?" That is the problem. Bill 178 cannot be seen in isolation from the "notwithstanding" clause, and we have seen much argument, tragically, obscuring that very real issue.

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We can go to the generic and very important issue of what the word "distinct" means. It is clear—Margaret Atwood has made this point and others too—that the word "distinct"—or "distinctiveness" or "distinction"—in the English language does not mean the same as it does culturally or ethnologically in the French language.

I just leave that problem with you, that sum of the issues, and for that reason alone the "distinct society" clause and the distinctness of Quebec, as to what it means, is a serious issue.

I would like to talk to you very briefly on a second point, as we have not much time, and that is about the process. I think the process has done incredible damage to Canada as a nation and to our reputation. We have already noticed, for example, with regard to the Charest committee or the Charest report, now the Chrétien report, as it is being called, that the tragedy of how that impoverished, inadequate, outrageous set of hearings was conducted is now being given credibility as legitimate as to what those concerns were in the 23 issues and steps that came up.

Historians will not ignore, I suggest, the phraseology of the Honourable Jean Charest when he advised over CBC Newsworld on 30 April the following:

"The committee has made 'choices we have made speak for ourselves.'" Then he goes on to say: "We have chosen those to speak in a certain capacity, 'mostly from government.'" He goes on further: "We couldn't go anywhere because we would have spent 'more time travelling.'" The committee was about the business "of making sure we heard from the right witnesses."

This is the legacy we are creating, the democratic tragedy that is seeding itself, infesting our system of government, and I think this is outrageous. I am not going to sit idly by and watch a Canada breakup and leave for my children a country that is not at the very least a democracy. That is what is on the table today.

We have, through your own committee hearings even today here, the tragedy of this committee and its inability to have adequate public notification. What a sham, for heaven's sake. I phoned up this morning because I saw an article in the press that a native representation had been here. I have been in Washington for the last five days. I come home, I hear about this hearing, I phone up and I am informed very politely by a terribly nice receptionist: "It was not possible to get advertising in time. There was not time to plan advertising. It requires some adequate notification, a gap of several days." I am informed by Faye Collins, the receptionist, as to what these hearings are all about.

I spoke later with a Norm Perberich who told me, "We have been able to get the word out," on these hearings, "through the press gallery." Now, these articles are hitting the press and he says, "We couldn't get advertising until this Saturday." What on earth are we indulging ourselves in in this country? We have no business doing this kind of thing and calling it a democratic hearing and process, for your information.

There was a comment in the Toronto papers just a few days ago that this had not hit the international press, I think largely because it had been ignored in the French papers. But we are not being ignored any more. It is the cover of Time magazine, the angst, bitterness and anger of Canada.

The very day the Toronto papers were saying there was nothing occurring in the international press, on 10 June, the Washington Post had a full-fledged front page article on what is going on in Canada, "Canadian Leaders Sign Pact for National Unity," and then cites all of the tragedy of this process. "Canada Accord on Quebec Issue May Fall Apart" said the New York Times of the same day. We are being watched, we are being noticed and irreparable damage is being done to this country by the way we are conducting our affairs.

I believe it is the responsibility of this committee to make some very important caveats as to its findings, the process under which they were conducted, and to make it absolutely clear that it is not in a position to absolutely call this a credible public hearing in which true and due findings were made in the public interests of Canadians and Ontarians.

Conclusion: There is absolutely nothing sacrosanct about the date of 23 June. If Canada is going to fall apart because of such a silly time frame, then what on earth will hold it together after Meech is signed? A parallel accord with lines that never meet?

I suggest we set some sensible time frames for each of the key issues. Surely Senate reform can be accomplished in less than five years. Surely aboriginal peoples are among the founders of Canada. What nonsense to think otherwise. We must not fear the use of national plebiscites or threats from any segment of Canadian society.

Whatever is to be done, there has to be a level playing field. The rules of cricket and lacrosse do not mix. Even sovereignty-association or outright separation will require this much common sense. We do not seem to have that as yet in the Meech Lake accord process. Above all, I suggest it is time for politicians and first ministers to trust Canadians. We are a fine and super people. We have built much, done much and shared much, a glorious heritage, and this has been ignored.

What have we heard throughout these entire procedures about the heritage of Canada, what has been paid for it and what has been done for it by this country? There are many who are tired of the process. Stephen Lewis tells us Canada is dying, and there are others mouthing off platitudes of defeat about this country. Perhaps it might be wise to adhere to the words written many years ago by Thomas Payne, the father of the American revolution: "Those who expect to reap the blessings of freedom must, like men, undergo the fatigue of supporting it."

Canada is not the bond market; it is not a labour contract. It is a great gift that we must carefully nurture and enrich, not rush to savage with selfishness and blatant stupidity. Canada is a democracy. It is not a six and ten bargain basement store where Senate seats are pulled out on a piece of paper and tossed before the public as some great gesture in the Holy Writ name of being a solution to a rushed deal. Canada is a shared experience of love, commitment and grandeur. It is about time we started to behave as an adult nation as if we deserved her. Let's begin again.

The Chair: Thank you. We have time for one question.

Mr Wildman: I share your concern about the time frame that we are facing. It is inadequate, obviously, to have any kind of real dialogue with the people of Ontario about what the import of the accord reached in Ottawa on 9 June really means or may mean.

It has been argued among members of the committee, privately perhaps, that because in this very short time we have not received enough requests to make presentations to require us to hold hearings on Friday as well as next Monday and Tuesday, perhaps there is not a great deal of demand from people in Ontario to participate in these hearings and therefore our time frame is not too short. How would you respond to that?

Mr Armstrong: I would say that it is an outrageous, flagrant abuse of democratic privilege, first, not to give notice and then, to draw the conclusion that because you did not have adequate notice, you had lack of interest in participating. Nothing is more clear than the Charest hearings. They got the surprise of their lives when 800-plus Canadians showed up and absolutely swamped the process. No, sir, that is a totally unacceptable premise. That is exactly the type of challenge I lay before this committee.

If that is perhaps something that does come to the fore or is even suggested for a moment, I would suggest those hearings again should be completely disqualified. I think the hearings should be closed. I do not believe or lend any credibility to these hearings. I am happy to speak to you, to share with you any knowledge I have about it, but I challenge the credibility of these hearings and this process.

Mr Wildman: You recognize of course that we have, as a Legislature, already ratified the Meech Lake accord.

Mr Armstrong: Oh, yes.

The Chair: Thank you very much, Mr Armstrong. We appreciate your comments.

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Mr Cousens: Mr Chairman, I am getting offended if in fact we are so short of time that there is not even an opportunity for at least a couple of comments or questions on presentations. By virtue of the importance of this, it is just proof that what we are going through is an even bigger sham and also—

The Chair: Mr Cousens, you have been around long enough to know we have difficulty with time frames.

Mr Cousens: I am just telling you I take offence at what you are doing and I take offence at what this government is doing. I think what Mr Armstrong has said tonight is pointing to the real problems we are facing in Ontario with this government. I am telling you I am getting sick of it and the people around here are getting sick of it.

The Chair: Mr Cousens, we previously agreed as to the process and I am sorry but you are here substituting.

Mr Cousens: I am here substituting and I am here because I care.

The Chair: That is fine.

Mr Cousens: So do a lot of people in Ontario.

The Chair: I do not mind that, but we also have to adopt rules and follow them. Thank you very much, Mr Armstrong.

Mr Cousens: You are pushing the people of Ontario around.

The Chair: Our next presenter will be William Hynes.

Mr Cousens: This is democracy—sure.

Mr Epp: I wish the Reverend Cousens would slow down.

Mr Cousens: You should not make any comments like that that have nothing to do with what we are talking about. If you cannot be impressed by what Mr Armstrong said, I do not know what will ever impress you.

The Chair: No one said we were not.

Mr Cousens: There is not enough time to give us a chance to deal with it.

The Chair: Mr Hynes, would you come forward, please?

Interjection.

Mr Cousens: I ask the honourable member to withdraw that. That has nothing to do with—

The Chair: The honourable member is not on record, so can we get on with what we are here to do, please?

Mr Hynes, you have been here. You understand there are 20 minutes allowed for your presentation. We hope you would allow some time for questions.

WILLIAM A. HYNES

Mr Hynes: I certainly hope the clock does not begin running until I start.

The Chair: No, not until you sit down.

M. Hynes : Je voudrais d'abord remercier les membres du comité de m'avoir invité. I would also like to thank Ms Deller and Mr Berberich for photocopying and giving out some articles that I have written on linguistic and constitutional questions. I am a little bit in awe of Mr Armstrong. My family only arrived in North America in 1886 and it had the misjudgement to land south of the 49th parallel. I rectified that by coming to Canada in 1971 and becoming a citizen in 1977.

J'ai pris quand même la peine d'apprendre la deuxième langue de mon pays, comme vous le voyez.

I have written several articles on the rights of Franco-Ontarians and on the position of the French and English languages in Canada in English, and I have written three children's books in French which I will forbear to name.

I agree that the Meech Lake agreement and the new agreement reached in Ottawa are wretched documents wretchedly arrived at. Unfortunately, we are probably stuck with them. We are stuck with them because of a federal government so decentralist that we must borrow a word from the history of my original country and call this government antifederalist, one that sees the central government as evil just because it is central; perhaps in some cases a necessary evil, but evil all the same.

This, by the way, leaves very little as a focus of patriotism, except perhaps the leaves on the trees and the beavers in the streams, and naturally encourages people to focus their loyalty on their provinces or perhaps their townships.

This government has succeeded in creating such expectations by saying again and again in public, "First we must have this agreement or Quebec will not ratify the Constitution." I do not know why it must. The state of Massachusetts never ratified the fifth amendment to the United States Constitution and you

can take the fifth as well in Massachusetts as anywhere else. The state of Mississippi never ratified the 15th amendment giving black people the vote. The federal marshals see that they do indeed vote. Quebec did not seem to be particularly disturbed at being left out. The feds kept telling them how humiliated they were until they began to feel they were humiliated.

The stakes were then raised, "You must ratify this agreement or Quebec will not sit in on any more first ministers' conferences." I would think it would be a great favour if some province would refuse to attend any more, but never mind.

Finally, again it was Mr Mulroney and his Trojan horse Mr Bouchard who then raised the stakes to, "Ratify this or Quebec will leave Canada." In the atmosphere in Quebec now, once a federal minister has said that, no Quebec opinion-maker can say less. It becomes a self-fulfilling statement.

So we are in the situation where we have to ratify the wretched thing, hold our noses and swallow our vomit. We are steering a skidding car, and it is not the time now to write a letter to the department of highways, "Check the tread on the tires or send a driver to skid school." We simply steer out as best we can.

What I would like to speak to you about is what I believe Ontario ought to do next. I assume that if Manitoba does not manage to drag itself over the finish line by midnight on 23 June, all the legislatures and parliaments can get together and pass the wretched thing again, so I am assuming it is going to pass.

I would like to make several suggestions. One is that we dilute the distinctiveness of Quebec by making the rest of the country, and in particular Ontario, more truly bilingual. I know that some people will retch at this idea when Quebec seems to be moving towards an aggressive unilingualism.

I want to say, first, that Franco-Ontarians and other French Canadians outside of Quebec are not hostages for the good behaviour of the Quebec government. Second, in a country in which most of the people, if you corner them, will still profess to be Christians, we might perhaps follow the advice of Jesus Christ that when your neighbour behaves wretchedly, treat him with kindness and you will be heaping coals of fire upon his head, something I would dearly love to do to Lucien Bouchard.

Finally, we can also act in the spirit of the poem by Edwin Markham called Outwitted, and I would dearly like to outwit Mr Bouchard. If I might quote it, it says:

He drew a circle that shut me out—
Heretic, rebel, a thing to flout.
But love and I had the wit to win:
We drew a circle that took him in.

Just how we ought to make Ontario more bilingual and why we ought to do it I would like to address a bit farther on.

We know there is going to be a demand, at least from Quebec and probably from the west and probably from the northern territories and the native people as well, that the federal government give up its authority in the field of radio and television communications.

That and school rights are probably the two things that would be irreversible. Other federations have become stronger and weaker as they have passed, repealed and repassed successive constitutions. Switzerland, for example, was once very decentralized and is now rather centralized.

However, if the federal government gives up the right to protect English- and French-speaking minorities in terms of education, they will die out. If it gives up the right to control broadcasting, the language minorities will die out and the national consciousness of the country will be diluted to the point where it would be impossible to rebuild it.

I would like Ontario, for once, to act instead of waiting and reacting to some outrageous suggestion from the feds or from the west or from Quebec. I would implore you therefore to recommend that Ontario put on the table now, even pass perhaps through our Legislature as an amendment and invite the others to ratify it:

1. That any devolution to the provinces by constitutional amendment or by statute or by regulation, any devolution of federal authority over radio and television would reserve to the federal government the right to maintain enough radio and television stations in English and enough radio and television stations in French to be able to reach every corner of this country with at least one radio and one TV signal in each official language;

2. To mandate in the Constitution that where there is no English station or where there is no French station, private sector or provincial or municipal or run by some voluntary association like Pacifica Radio or PBS in the United States, in that part of the country the federal government must provide radio in English and must provide radio in French and if there are, say, 500 speakers of the minority language must provide television in English and in French.

In terms of making Ontario bilingual, what I would like first is to say that since we are doing the work and spending the money of being a bilingual province, we should claim the credit, stick our fingers in our suspenders and give them a snap and say, "Yes, we are an officially bilingual province," or if official language is too emotional a term, say, "English and French are the administrative languages of Ontario." We do not have to call them "official."

We then set a generous deadline, say, the 150th anniversary of Confederation, 1 July 2017, and say that as of that date the services that are now available in English in Ontario throughout the province will be available in French and, oh yes, entrenched in the Constitution for the nervous Nellies. Yes, they will still be available as a constitutional guarantee in English so some future hypothetical Franco-Ontarian majority could not withdraw them.

2150

We would pass this as a law, and second, entrench it in the Constitution, under section 43 that says a provincial Legislature and the federal Parliament can pass any constitutional amendment that affects only that province, do it that way, or go ahead and ask the other provinces if they will, pretty please, allow us to do this.

Next, I would request that Ontario, being no less a Canadian province than Quebec, assert its right and ask for its own seat in the Agence de coopération culturelle et technique et la francophonie. We are a Canadian province, as Quebec is. If they have a right to join this international organization, we have. Ontario is no less a francophone jurisdiction than Morocco, which hosted the francophone games. We have more native speakers of French in absolute numbers and as a percentage of our population than Morocco has, more people learning it as a second language, and we, after all, were part of the colony of New France. Morocco never was a French colony, merely a protectorate. If they are part of la francophonie, bien sûr, l'Ontario l'est aussi, mes frères et mes soeurs.

We should ask to have our own teams at the francophone games, and even ask that some francophone event be held fairly soon in Sudbury or Cornwall, some largely French-speaking city away from Ottawa, which, after all, people see as a federal city, not fully a part of Ontario. Mr Campbell said he wants us to be a mature country. I will believe we are a mature country when we can hold a Commonwealth event in Quebec City and a francophone event in Victoria and nobody is even impressed that we can. I think if I do not see that in my lifetime, I am going to see this situation where Vancouver or Victoria is not in the same country as Quebec City any more.

Ontario asking for a seat in the AGCOP will infuriate certain people in Quebec, but the ordinary Quebeckers will see it as a profound gesture of respect. The Quebec business people will wake up to the fact that a separated Quebec would not have the business, commercial, technical and touristic connections of the francophone world to itself.

The rest of Canada, if it wants to, can go on being a bilingual country without them and latch into the 20-odd francophone countries on our own. The French-speaking population of Canada would still be as large proportionally as and much larger in absolute numbers than the Swedish-speaking population of Finland, where Swedish is a full official language, the constitutional equal of Finnish and where, by the way, because of the cleverness and economic management of the Finns, it does not cost any extra money. We should perhaps study their methods.

May I ask how much time I decently have, by the way.

The Chair: You have about another eight minutes.

Mr Hynes: That is fine.

The same opinion poll published in the Toronto Star that said a majority of Quebeckers would vote for sovereignty-association and perhaps even for outright independence also said that about 60% of the people of Quebec want English and French to be official languages of that province. By the way, the same poll said that about the same percentage of the people of Ontario want English and French to be our official provincial languages. I could not figure out why at least 12% of the people are saying they want to be a separate country and also say they want English to be one of their official languages.

I looked at the matter, read the media in French and English, listened to the French-language CBC and so on, and I found there are really three nationalisms at work in Quebec.

One is what I would like to call a reactive nationalism. People who at heart want to be Canadians and apparently want to live in a bilingual Quebec and a bilingual Canada are reacting against real and perceived insults and injuries from the rest of the country and are saying: "Okay, if you feel that way about it we'll leave, but we don't really want to leave. If you remove the insults and injuries or persuade us they weren't there in the first place, we'll stick around."

Second, there is a positive nationalism—I think Jacques Parizeau falls into this category—of people who do not really care very much what Ontario or anyone else in Canada does. They have decided that Quebec and not Canada is their country. They have come to the conclusion that Réné Lévesque expressed when he said to an American reporter: "Damn it, I'm not a French Canadian. I'm a Quebecker." Some of those people will never change their minds. Others, I think, can be persuaded that they are after all French Canadians if they are shown that French Canada will survive outside Quebec, that the English-speaking majority will not allow it to die out.

To those who say, "Why is it always the English speakers who make the concessions?" I say, "When you are dancing with a partner one fourth your size, you don't step on her feet if you want her to stay on the floor for the next dance. More important, you don't step on her feet if you love her and care for her."

The matter of the Senate: I want to suggest only that the question is now being raised in Quebec of how an elected Senate would be elected.

I said there are three kinds of nationalism. The third I would call negative or revanchistes—there is no good word for it in English—a nasty kind of revenge-seeking nationalism.

Lysiane Gagnon, one of the most respected Quebec columnists, said that if Robert Bourassa had apparently welshed on an agreement as Mr Wells and Mr Filmon appeared to do on Thursday—forgetting that he did welsh on one at the time of the Victoria conference—the English media would have had a fit, would have jumped all over him. Then she proceeded in the rest of her column to excoriate English Canada, not for what the English Canadian media had done but for what she said they would have done if Mr Bourassa had done something he had not done.

The commentator on the French-language CBC said that an elected Senate would be bad because if people got to vote for two federal representatives, a senator and an MP, and only one provincial representative, they would think of themselves as Canadians twice as often as they thought of themselves as Quebeckers. He took for granted this would be bad.

M. Landry, the vice-president of the Parti québécois, debating Claude Ryan, said the power of immigration given to Quebec meant nothing because the other provinces could have it as well. Mr Ryan, supposedly the strongest federalist in the Quebec government, did not say, "Come on, who cares if they've got it as long as we've got it?" Instead he said: "Well, they don't really want it and they're not going to use it. So we're really the only ones who have it."

We are dealing with that kind of separatism and that is not the attitude of the people of Quebec, but if we play into the hands of the types of people I have just quoted it will be, a bit down the road.

In the case of an elected Senate, in the United States Constitution, before the adoption of the 17th amendment, so that each state Legislature—I have been in this country so long I almost said provincial Legislature—would decide how the senators from that state would be selected—if Canada adopted such a provision, nine provinces would run out and set up an elected Senate—I hope that if there is an elected Senate the members will serve only six or so years and not for ever—and Quebec would kind of waffle and argue and want to have the senators chosen by the Legislature. The ordinary Quebecker is going to say, "Hey, how come we can't elect senators?" If these revanchistes say, "Well, we're afraid that if you vote for senators you'll think of yourselves too often as Canadians and not enough as Quebeckers," people are going to understand a job is being done on them.

Finally, in terms of the process, the process is a disaster. If 11 people can make a bargain and then say, "Okay, not legally, but morally and in terms of honour and politically, the rest of the country is bound to ratify this," and now one person, Mr Peterson—he had to in the situation, I am not criticizing him—can go in and say, "Okay, this is going to be Ontario's share of the Senate," and do it in such a way that now this Legislature has no choice but to ratify it—it would be unthinkable now to back out and say, "Sorry, guys, we lied."

I would ask this body—I have already asked you to go ahead on this thing with the media and with making this a more bilingual and more securely bilingual province—to propose this provincial option on how the senators will be chosen. But I implore you to put forward now, even to put through our Legislature as an amendment, as Quebec did with Meech Lake before the federal Parliament, and throw it up to the others that there has to be a more democratic process, perhaps a tabling of a rough draft, the gist and sense—lawyers can put it more elegantly—of a constitutional amendment, and then some months of hearings before a legal text.

I would also ask you to propose that we adopt in our Legislature as a procedural rule that no constitutional amendment could be considered without six months' notice—never mind the five, 10 days they have in Manitoba—and without hearings being held in each region of the province. We do not need anyone's permission or consent for that. You, ladies and gentlemen and your colleagues, can pass that fairly easily, I think, through our Legislature.

Finally, I must say that I believe we are in a crisis that is artificial in the sense that it was created by what I have called an antifederalist federal government. It is real in the sense that it can destroy the country that we love. Because of this, in spite of their having to deal as best they could in a wretched situation, I am very proud not only of Mr Peterson but of the two opposition leaders, Mr Rae and Mr Harris. In a nightmare, all one can do is struggle to wake up. They have done the best they could.

Je suis surtout Canadien, mais ces jours-ci, je suis aussi très fier d'être Ontarien. Merci beaucoup. Thank you very much.

2200

The Chair: Thank you very much, Mr Hynes. Could you just sit? We have time for one question.

Mr Wildman: I find your ideas intriguing and original. I think it has been very refreshing to have you before the committee. I thank you for coming.

Mr Hynes: I thank you for your comments.

The Chair: Thank you, sir, very much. We appreciate your coming, particularly on short notice.

Mr Mahoney: Especially in the situation in which you came.

Mr Hynes: That was pure luck, or maybe fate.

DAVE WEAVER

The Chair: Our final presenter this evening will be Dave Weaver. Mr Weaver, we have allowed 20 minutes for your presentation and questions, so if you could make a brief opening statement and allow some time for questions we would appreciate it.

Mr Weaver: Actually, I am not going to take your 20 minutes. I just phoned today and found out that this thing was happening today, so I did not have a lot of time to prepare anything. I have been working all day. I just came straight from work. Some people do have to work at night.

Mr Mahoney: We're still here.

Mr Weaver: Yes. I understand that this is the Ontario government's committee on hearings for Meech Lake. Am I in the right place? Good stuff.

All I want to say basically as a resident of Ontario—I was born in Ontario; I was born in Toronto—is I find this whole Meech Lake thing very frustrating as a citizen. I find the Ontario government's position of not consulting the people—this committee is an attempt, I guess, to do that, but the thing, as far as I know, has already been signed. As a citizen, not to be consulted on something as important—at least I see it as pretty important—as this Meech Lake thing really upsets me. I do not think it is right and I do not think it is fair. I think something should be done about it if it is not too late.

I do not like the Meech Lake accord. There are a lot of reasons why and you have probably heard them all. It is pretty simple. My opinion is that basically I do not think it is good for the country. I think it is short-sighted and it is inevitable that when this thing is passed it is going to lead to the separation of Quebec and the breakup of the country. I do not see any doubt about it, personally.

The Ontario government's, Mr Peterson's, position of supporting this Meech Lake accord, I just do not understand it. When I grew up here, Ontario always represented a place where rights were thought of pretty highly, everybody's rights. I do not see that happening now, as far as somebody standing up for Canada is concerned. I expected the Ontario government and Mr Peterson to do that. I do not think he has done that and it upsets me very much.

I am a person with a pretty simple philosophy: There is good and there is bad. The Meech Lake accord is bad; it is short-sighted. Anybody, especially from Ontario, who supports this kind of thing, is not looking at the long-term problems that it is going to create. I guess that is pretty well it. It just upsets me.

Mr Mahoney: First of all, just on the issue of public participation in the Meech Lake accord debate, our Legislature has already passed that. That was done last June. This document, which I am sure we could provide you with, is a copy of the results of the hearings that took place. There are something like eight foolscap pages listing the people who presented their concerns during those hearings. I only point that out, not in defence of Meech Lake but in defence of the process of public participation at that time. It is a different issue, in a sense, from what we are meeting about here this evening.

The criticism has been made of this process that we are on a very tight time frame, and there is perhaps some justification in feeling that way, that we are on a tight process. But we are not really debating whether or not we should pass Meech Lake. That was done. As a result of the public participation that went forward, the report of the select committee, chaired by Charles Beer at the time, was put out. That democratic process was indeed followed and participated in at some length by members of the public. We can give you a copy of that.

Having said that, I think you have summarized, in my sense, the feelings of many people who look at the whole issue of Meech Lake from a properly simplistic point of view in having concerns about it. But are your concerns more around the process of amending our Constitution or are they around specific issues, ie, "distinct society" or Senate reform or specific issues within the accord, or indeed within the final communiqué, which is the issue that was resolved last Saturday in Ottawa and is what we are really talking about tonight?

Mr Weaver: As I said, I like to keep things simple. When you take all the gobbledegook and legal mumbo-jumbo out of the whole thing, it is the "distinct society."

Mr Mahoney: That is what bothers you, the "distinct society?"

Mr Weaver: As a Canadian it bothers me, yes. I do not want to see Quebec separate, but I do not think that the government of Ontario or the rest of the country should have to bow down to one specific interest in order to save the country. Save the country at any cost? Forget it.

Mr Mahoney: One follow-up question to that: John Crispo, Professor Crispo, was before us earlier and he turned the analogy around. I would just be curious at your reaction. He said, "How would seven million anglophones in a sea of 250 million French people react and feel about trying to protect their language and their culture?" Because that is where Quebec is. They are in a North American sea of 250-million-plus anglophones and there are seven million French people. So if we turned it around and had seven million anglophones surrounded by 250 million Frenchmen, how do you think they would feel?

Mr Weaver: I would hope that the seven million anglophones would have enough respect for rights of people not to implement laws that take away basic human rights. I would hope that they would have enough security, enough pride in their own culture that they did not have to—I cannot think of a better word—take away or—

Mr Mahoney: I think that puts it very well. You do not need to think of a better word; that puts it very well.

I suggest to you, not by any argumentative process at all, because I respect your viewpoints on it, that you hit a very, very important word in your answer. You said you would hope that those seven million people, be they an anglophone minority or francophone minority, would have the security. That to me is the key word. I do not think they feel secure within Confederation. Hopefully we can bring them into Confederation and create that security. That is just my opinion on it.

Mr Weaver: How many years, 100 years? Since 1867 or whatever, since they have joined Confederation, they have not done too badly.

Mr Mahoney: Neither have we.

Mr Weaver: No, we have not. As far as I am concerned, the French culture is doing better and better, and so it should, and I hope it does for ever. But the situation that is happening now is getting to the point where you are either a Quebecker or you are a Canadian. This Meech Lake thing can only make the Quebec feeling more strong, and eventually they are going to separate.

The Chair: Are there any other questions? Seeing none, thank you very much, Mr Weaver, for your presentation, particularly on short notice.

Ladies and gentlemen, we are adjourned until Monday morning, 9 am, in Ottawa.

The committee adjourned at 2210.

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Ontario

C-6 1990

Legislative Assembly of Ontario

Second Session, 34th Parliament

Official Report of Debates (Hansard)

Monday 18 June 1990

Select committee on constitutional and intergovernmental affairs

Constitutional accord

Assemblée législative de l'Ontario

Deuxième session, 34e législature

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL AND INTERGOVERNMENTAL AFFAIRS

Monday 18 June 1990

The committee met at 0910 in the Westin Hotel, Ottawa.

CONSTITUTIONAL ACCORD
(continued)

ACCORD CONSTITUTIONNEL
(suite)

The Chair: We would like to welcome you to the select committee on constitutional and intergovernmental affairs. This committee has as its mandate—and I will read the motion that was passed last Monday—"That the select committee on constitutional and intergovernmental affairs be authorized to consider the 1990 constitutional agreement signed in Ottawa on 9 June 1990 (sessional paper number 400) and to report to the House no later than Wednesday 20 June 1990." We have been meeting since last Tuesday. We are pleased to be here in Ottawa.

CANADIAN DEVELOPMENT INSTITUTE

The Chair: Our first presenter this morning is Nicholas Patterson. Could you come forward, please? We have allowed 20 minutes for your presentation. We would like you to allow some time for questions if you can. Carry on when you are ready.

Mr Patterson: My name is Nicholas Patterson and I am the director of the Canadian Development Institute in Ottawa. We are an Ottawa-based public policy research group, as described fully in our handout which you all have. This is the handout and in the back it describes CDI.

My purpose in appearing before you today is to complain about the constitutional process, in particular these very hearings that you people are now conducting here today. It is an absolute scandal. After all the complaints from laymen and experts alike about pressure-cooker constitutionalism, about the lack of public consultation and about the arrogance and dishonesty of our political leaders, here we are again with another disgusting spectacle in the form of these hearings themselves. Are you people deaf? Have you not heard the news? The public is fed up with this kind of baloney. Do you people not understand? We want it stopped and we want it stopped now.

In what sense are these hearings a disgusting scandal, another example of pressure-cooker constitutionalism? In what sense do they make a mockery of public consultation and show again the arrogance and disrespect you people have for the citizens of Ontario? The agenda of this committee itself proves this beyond a shadow of a doubt, based on the information I got from your aide, Mr Berberich. We are talking about the Constitution of Canada here, for goodness' sake, about a complex and controversial Meech Lake accord, about the Meech Lake add-ons, including Premier Peterson's Senate seat sale, the dubious proposal to give away six of Ontario's Senate seats, which will require legislative approval. These are important matters in the Constitution of our country.

It is not just some stupid spending bill that you guys are so good at. In the long run, Ontario can survive your waste and profligacy, but the Constitution of Canada, if you screw that up, you could destroy the country. Obviously, the Constitution of Canada deserves some thought, some care and some time, but that is not the way you guys are operating. You are doing the very opposite. You are running this thing through like the Indy 500. Let me show you how, just point by point.

1. Last Monday 11 June, the Legislature passed a motion at 2 in the afternoon to have public hearings starting the very next day, on Tuesday, then on Wednesday, Thursday and today, with the last hearings supposed to be tomorrow. How ridiculous.

2. These hearings are so rushed and such a mockery that Mr Berberich on your staff told me they did not even have time to advertise the hearings, because the daily newspapers supposedly need four days' notice to run an ad. Mind you, this is wrong, because I checked with the Ottawa Citizen's chief of display ads, Mr Orban, and they only need two days' notice. But the bottom line is that because of your incompetence or otherwise as a committee, this committee has not even advertised these important hearings about Canada's Constitution.

3. Apparently you people are such a bunch of geniuses that you are going to complete your report on Wednesday, the day after tomorrow, following the last day of hearings. "This constitutional stuff is a breeze. It will only take us a day to write up some old piece of crap that the public will be asked to swallow"—that is the attitude here.

4. Then, apparently, your report is supposed to be submitted to the Legislature, to be passed the very next day, this Wednesday. Apparently the whole Legislature is a bunch of geniuses too, who can knock off this Constitution stuff easy as pie, just like you guys.

5. This is the bottom line. What it amounts to is this: This is an incompetent, slapdash operation from stem to stern and you all ought to be ashamed of yourselves.

But the basic question is, why the rush? What is the deadline for passing these Meech Lake add-ons, for example, the ones about the Senate seat sale? Well, Mr Chairman, you had better hurry up. Why? Because the deadline is 1995, five years from now. You heard right. You only have five years to get this stuff right. So all this hustle and bustle and rush is for nothing, for no legal reason whatsoever.

Well, what is the real reason for all the rush? Premier Peterson says that it is because he made a moral commitment to the western provinces to show his good faith by passing the Senate seat sale before the Meech Lake deadline of 23 June, just as a show of good faith. Is that not nice of David Peterson, to feel such a strong moral obligation to the western provinces that he is willing to bypass the citizens of his own province by substituting this ludicrous hearing process today in place of some thoughtful consideration of our Constitution? But what is the real reason besides this moral obligation of the high-minded Premier of Ontario? Probably it is the fact that Peterson's Senate seat sale is such an obviously stupid idea on the face of it that he wants to make sure it does not get any public attention.

Here is how dumb it is: Today Quebec and Ontario each have 24 seats, the same number even though Ontario is one and a half times larger by population. In other words, we have al-

ready got an imbalance in Quebec's favour in Senate seats. Why? Because Ontario has 9.5 million people and Quebec has a little over 6.5 million, but they have the same number of Senate seats at the moment. In other words, there is a senator for every 270,000 people in Quebec, but in Ontario there are far fewer senators per capita; that is, one senator for every 400,000 people. That is the current situation, but with Peterson's Senate seat sale, Ontario's representation deteriorates further, to one senator for every 530,000 people. In other words, what Peterson is doing worsens the imbalance in the Senate so that Quebec will have almost twice as many senators per capita as Ontario.

But I suppose David Peterson figures that because Quebec is such a distinct society it is only right that it should have twice as many senators per capita as Ontario. With this kind of loony idea, who can blame Peterson for getting you guys to put on this ridiculous spectacle? None the less, you ought to be ashamed. Why? Because this is the Constitution of Canada and you are treating it with such disrespect.

0920

Mr Epp: I guess, Mr Patterson, you are not exactly ambivalent about what is going on.

Mr Patterson: No, I certainly am not. It is a disgrace.

Mr Epp: You covered part of my question, and that was your concern about the Premier's concern about Meech Lake being approved in Manitoba and Newfoundland and the fact that he wanted not only to say in words, but also in action, the fact that he was prepared to provide some reform.

Mr Patterson: Is that a question you just asked me? What he said is that this demonstration of moral whatever is more important than the legal obligation to adequately consult the citizens of Ontario, and that is a disgrace.

Mr Epp: In speaking about Senate reform, I noticed that you were very selective in the province that you picked. In comparing Ontario, you did not pick Prince Edward Island, for instance, which has a population of under 150,000 and has four senators.

Mr Patterson: I believe firmly in a triple E Senate which would give them 10 senators.

Mr Epp: The point I am trying to make is that you were very selective in the province that you picked in comparison to Ontario.

Mr Patterson: I do not think Quebec is in need of any more senators now. That is a ludicrous proposal, to do a resolution which improves the position of Quebec vis-à-vis the Senate. Nobody ever suggested that.

Mr Epp: Nobody is suggesting that Quebec get more senators.

Mr Patterson: That is what they do get—

Mr Epp: No, they are not.

Mr Patterson: —per capita representation.

The Chair: Please allow him to ask to ask the question, and then you could respond, Mr Patterson.

Mr Epp: They have got 24 now and they are keeping 24, so there is no add-on.

Mr Patterson: That is not what I said.

Mr Epp: You also know that you did not pick Prince Edward Island, you did not pick Newfoundland, you did not pick Saskatchewan, whose ratios are much higher.

Mr Patterson: Did you hear what I said? That is not what I said, that they get added senators. It is per capita representation we are talking about, which is going to be double Ontario after Peterson gives away all these Senate seats.

Mr Epp: Mr Patterson, you have got to be fair, you have got to be fair to the rest of the provinces of Canada. You are not being fair in the kind of selectivity you are using in choosing Ontario and Quebec, those as the only two provinces. Use all the provinces on a per capita basis and then run through with your particular theory and formula, but do not pick two provinces and then try to dump on French Canada for some reason that—

Mr Patterson: I did not dump on French Canada. I resent that.

The Chair: Order, please.

Mr Patterson: Do not tell me I dumped on French Canada. That is a misrepresentation.

The Chair: Order. Mr Epp, would you ask a question, please, and Mr Patterson, would you please answer the question?

Mr Patterson: I will not put up with this guy saying that I dumped on French Canada. That is a lie.

The Chair: Order. Mr Epp, please ask the question.

Mr Patterson: And stop lying.

The Chair: Mr Patterson, please.

Mr Patterson: He said I dumped on French Canada. That is a lie.

The Chair: Mr Patterson, please. Now enough.

Mr Patterson: Enough lies, yes.

The Chair: Enough, please.

Mr Epp: Mr Patterson, do you have the stats with regard to the proportional representation for the Senate if we went through with this reform for every province of the country?

Mr Patterson: I do not have the stats, but I will tell you what my belief is. I believe that PEI should have 10 seats, and the very same number of seats as Quebec. The proportional representation—I believe in a triple E Senate. If you had asked a simple question and not wasted your breath instead of telling a bunch of bull and misinterpreting what I said—

The Chair: Mr Patterson, would you just answer the question?

Mr Patterson: I am answering the question. Would you please allow me to?

The Chair: Please go ahead.

Mr Patterson: If you would have the sense to ask me a simple question, whether I believe in a triple E Senate and whether I believe that PEI ought to have more seats, I would say, absolutely. But if you were to ask me whether Quebec needs more Senate clout and more seats per capita than it has now, I would say absolutely not. There is not anybody I know

in the entire country, including the Premier of Quebec, no one who suggests that Quebec needs more clout in the Senate on a per capita basis. If you are suggesting Quebec does, I think you are wrong and I think you are silly.

Mr Wildman: Would you agree that what is happening in the Manitoba Legislature at least and perhaps in Newfoundland, but particularly in Manitoba, demonstrates that what this Legislature does in Ontario really has very little effect on the provinces that have yet to ratify the Meech Lake accord?

Mr Patterson: Are you asking whether these hearings, for example, have any effect on the other provinces?

Mr Wildman: I am asking in relation to your comment that the Premier has indicated that he wishes to show good faith by Ontario by ratifying the Meech add-ons by 23 June. I am just asking, considering what has happened in the last few days in the Manitoba Legislature, and perhaps what is happening in Newfoundland, does that not indicate that what we do has very little relevance to what they do?

Mr Patterson: Absolutely. What this committee does has absolutely little relevance, has negligible relevance, because the proceedings of this committee itself have been kept a deep, dark secret from the public. I only heard about these hearings last Friday, and that was just that one of the media happened to find out about them. I phoned up all the other media and they never heard of them. These hearings are a joke, and I do not think that Elijah Harper gives a damn about what David Peterson is doing with the Senate seat giveaway. I agree with you on that.

Mr Allen: I guess few of us are under any illusions, Mr Patterson, as regards the nature and impact of the present hearings. I wonder if you have some comments as to how a Legislature which is up against certain kinds of, not just legal deadlines but also political deadlines in the sense that at least what David Peterson did has got some bearing on the way in which premiers concerned about Senate reform would feel, how it should act or respond prior to 23 June. Given that kind of situation, how would you have advised us to proceed?

Mr Patterson: There is no deadline for these hearings by 23 June. That is just made up in David Peterson's head, and you guys went along with it.

Mr Allen: No, that is essentially what I have said. There is no legal deadline. We have been advised by the lawyers who have been before us that there is in fact a three-year time span that we are allowed after the passage of these resolutions by the first Legislature in Canada.

Mr Patterson: Three or five. Three I guess.

0930

Mr Allen: Three, I think, is the term.

When premiers do go into meetings, one can imagine—this is not the first time we have been into it and had a deadline scenario in terms of meetings around the Constitution—there do come decision points and there do come pressure points and premiers make agreements. This is at the end of a three-year process, and of course we have all on this committee had our heads in this for three years, so there is not a lot that is new that is coming to us, in real honesty.

I wondered, given the need to make agreements under those circumstances and to attempt to honour them and get some advice out of a Legislature, how would you advise us to have proceeded?

Mr Patterson: I think the pertinent deadline is the three-year one. That is point one. Second, I think that very extensive hearings should be held. I support this Manitoba system of hearing everybody who wants to be heard. I think that is a marvellous idea. How could it be a wrong idea? How can there be anything wrong with hearing everybody who wants to be heard?

Mr Berberich, God bless him, told me when I phoned up, "You can't be heard." On Friday, I phoned up when I heard it on the CBC that there was such a thing as your hearings. I was told: "Oh, you can't be heard. We have selected our six people." I said: "Well, Mr Berberich, I am going to be heard. I am either going to be heard in the hall when they throw me out for screaming or I am going to be heard in front of this mike." Then Mr Berberich said, "Okay, you will be heard in front of the mike." I guess a little bit of being hard-nosed does not hurt in dealing with the government of Ontario.

The point is that the consultation of the citizenry of Ontario absolutely should take precedence over the moral demonstrations of good faith in case I might be lying kind of approach that Peterson is taking. Does that get to your point?

Mr Allen: I think this committee is already on record in its original report on Meech Lake as being very upset about the process, as you have indicated. We have proposed certain mechanisms that should be in place for public consultation as a matter of course. So I am glad to see that you are strongly supportive of that and, certainly after we get out of this crazy runaround, we will try to get on with it.

Mr Patterson: Which party are you with, if I may ask?

Mr Allen: New Democrat.

Mr Patterson: I see.

The Chair: Thank you very much for appearing before the committee. You were heard, and I thank you for coming on short notice.

THEODORE GERAETS

The Chair: Our next presenter is Professor Geraets. Welcome. You were here earlier. We have allowed 20 minutes for your presentation. We would like you to allow some time for questions if possible.

Dr Geraets: Certainly, I will do that.

The Chair: I also might indicate to you that the package you left for me is being circulated now.

Dr Geraets: Yes, I was going to ask you. In the latest issue of Policy Options Politiques there is a rather long article that I would suggest you read very carefully and meditate on. It is not just an ego-building exercise that I have here, but I have been reflecting for months and months on what is going on in the country. I cannot touch, obviously, in such short a time on all the aspects of the article. Therefore, I hope you will consider it very carefully.

Somewhat contrary to my predecessor, I am not here principally to blow off steam. I do want specific action by this committee. I think there is a solution very worthy of your consideration and, surprise us, nobody I think is going to expect from this committee a proposal for radical change of the constitutional process. But I think the effect on the country would be tremendous if you brought up the intelligence and the courage to make such a proposal.

It would be an action that, contrary to a lot of what has been going on, would deserve the name nation-building. I disagree with Premier McKenna when he says that the Constitution is just words on paper. He talks about our damned Constitution; we get along so marvellously well until we start discussing this damned Constitution.

The Constitution is the self-image of a people or of peoples who try to build together one country. In our age, we do need to build a new Canada. I think that patriation, which made us finally completely autonomous, has not been digested yet and I think we do need to reflect carefully, slowly, not in a hurry, on the building of this new Canada.

Canada is, and nobody can deny it any more right now, a multinational state. We are not just one nation in the traditional sense. It is multinational because of the Québécois nation, multinational because of our first nations, multinational because of even the ethnic variety and diversity in our country, and we do not have a Constitution that reflects that, which obliges us therefore to carefully, slowly and very democratically reconsider our entire Constitution. This cannot be done in a few days. But what can be done, I think, fairly rapidly is to make a radical change to the way we go about doing it.

If Canada is such a diverse country, where are the symbols of our unity? Obviously, we have one flag, although of course all the 10 provinces have their own flag as well. What direction are we going? Are we going further and further into what I would call excessive provincialism? This has from the start been my main objection against the Meech Lake accord, which amplifies and enshrines in the Constitution the kind of so-called equality among the provinces that we find, and legitimately so, at first ministers' conferences, but which should not go beyond that.

More and more Canadians will say, "I am first—" whatever province they belong to, and then "Yes, we also form together a Canada," which might be some kind of loose federation. This, I think, is the main danger that our country is in right now. What is at the root of that problem? The root of that problem is what is called executive federalism.

The root of the problem is that we have our first ministers, who have been elected, the provincial ones, to look after the particular interests of their own province, and they call themselves nation-builders and they want to build the one Canada. I do not question their good faith, but I think it is irrational to have the Constitution of a country like Canada, for all practical purposes, decided by those 11 first ministers. No country in the world does this. Let's realize that.

In eastern Europe, there is this wave of desire to become democratic. Unfortunately, Canadians are so law-abiding that it is very hard. Of course we have not had the dictatorship like they had, but the problem is that we do have executive federalism and even, as Premier Peterson wrote to me a few months ago after I wrote to him, we do have legislative federalism. It has to be balanced.

You remember the report of the other select committee on the Meech Lake accord where, on the process, it was said: "Yes, executive federalism on its own is bad. We should add more of legislative federalism." I tell you we should have popular federalism. The only solution for Canada is to go beyond elected provincial politicians. I am not against you, you are doing your job, you are looking after the matters you have been elected to look after. But you have not been elected for this or that constitutional amendment, rather for a road in your riding and things like that. You know how it goes.

The ultimate source of sovereignty is the people of Canada and the populations of the provinces. The Meech Lake accord extends the veto. You have read the Globe and Mail. All of you professionally have to read the Globe and Mail. You remember Jeffrey Simpson's article on the incompatibility between unanimity and an open process. I am not going to repeat his article. If you have not read it, try to get hold of it.

An open process requires a decision by majorities and not by unanimity. The Meech Lake accord extends the rule of unanimity. What sort of unanimity is it? It is exactly unanimity that we have seen at work in the—now I am going to blow off a little steam—insane circus of this week of closed-door negotiations, which afterwards was presented in even a worse way. I would not call it any more an insane circus; I would call it something like indecent manipulation.

0940

I think all of you will agree, even the first ministers agree, that as along as the amending formula—and now we come to my main point—is not changed, nothing very fundamental will change. Simpson, at the end of his article, talks already about Meech Lake 3. As long as we stay with the present process and with the present amending formula, we will not escape this. We will have a few more hearings before, but then at the end, because of the rule of unanimity, we will have exactly the same situation we are in now.

In the article that I gave copies of, you see there are some appendices. If you have it in front of you, I would like you to take pages 18 and 19 of the article, appendix I and appendix II.

Appendix I is "How to change the process?" The question I have here under number 1 is, "The submission to the people of Canada, in a binding referendum, of the following question: Should constitutional amendments, after approval by Parliament, be submitted to the people of Canada in a ratification vote?" There has been no poll on this, but I do not think we need a poll.

I think Canadians want official recognition that the Constitution is theirs. It does not eliminate the role of the legislatures or of the premiers. They have to propose, however, and it is the people who should have the final say. The advantage of this, if you look at appendix II, which more clearly specifies on page 19 what an amending formula would look like, is that you would require regional majorities in such a ratification vote.

My time is almost up, if I want to allow for some questioning. I will not go much farther, but there is a whole list of advantages here to adopting this formula. The first one is very fundamental. If there is this formula that requires a majority of the population of Canada as well of certain regions, never will there be a constitutional change that would be rejected by a majority of Canadians. The situation we are in now is that maybe Mr Harper in Manitoba, using the system, expresses more the will of the majority of Canadians than the 11 first ministers.

The Globe and Mail had a whole list of all the people to impress Wells, all the politicians who have come out. Politicians are after power and you know that. The Constitution should not be subjected to power play. They should be obliged to listen to the people, because the people would have the final say. Our present amending formula does not at all guarantee that we would have a Constitution that would be approved by a majority of Canadians.

I could go on for another hour, but there is little time.

The Chair: Thank you, professor. The first questioner is Ms Munro.

Ms Oddie Munro: I think each one of us has had time to read some of the comments in your handout and also to have referenced it in Policy Options. I certainly appreciate the way that you have spent careful time thinking about all of these things.

Before I ask my question, I would like to say that we on the committee feel that we are part of the process. I am glad that you referred to the previous report of the Legislature, because I understand that this was something the Premier of this province took into account in his negotiations. I accept that, as much as the first ministers' conferences are part of the process and in addition the more formal meetings on the Constitution, so is this committee.

Notwithstanding all of the emotion, and we understand that, we on this committee have to prepare a report and we will do. I certainly appreciate it, and I would like to say that anyone who comes before the committee has a lot of emotion and we understand that.

Dr Geraets: I hope I did not just express emotion. I may have raised my voice but—

Ms Oddie Munro: Yes, that is true.

What I would like to say, as far as process is concerned, is that Senate reform seemed almost to be an answer to some of the provinces' concerns. It was in many ways put in opposition to Quebec's concerns to finally being brought into the Constitution.

Our committee has been studying Senate reform, and I am just wondering, in light of your comments and recommendations on the process, how you think our province, or any province for that matter, should appoint members to the commission which is to come into effect, which brings the federal government and the provinces in, and what some of the terms of reference should be as they go and seek input from the people of the province.

Dr Geraets: Let me say two things. First of all, as far as Senate reform is concerned, there is an appendix III in my text where I agree that Quebec might very well have more seats than Ontario actually. So I disagree with my predecessor here.

The second thing is that if you read the first ministers' agreement, which you have done obviously, you see that there is this commission on Senate reform and the committee on the Canada clause. Then it says the entire constitutional process has to be reviewed, including the three-year time limit. There is no commission or committee looking into the process itself. I think this is a grave lack in the document itself. If they are appointing commissions, then the first committee should be on the process.

In answer to your question, I think it would be very profitable if—was it an Ontario committee or commission that you are talking about, or the national commission?

Ms Oddie Munro: Well, Ontario is one of the partners to the commission.

Dr Geraets: Yes, but what is meant here, I think, is a national commission. The one on Senate reform is a national commission. I would like to see this come as close as possible to a constituent assembly, therefore not composed exclusively of elected politicians, either federal or provincial.

I think there should be more input of intelligent people who speak for and know well communities that compose this very complex country that we are in, which is a marvellous country. It could be an example for the world. If you read the preamble to the Constitution that is also one of my appendices, I mention that aspect.

Briefly, in answer to your question, I would like this to be as close as possible to a constituent assembly, not composed just of elected politicians.

0950

Mrs Cunningham: Thank you very much for appearing today. There have been great concerns about the process from the very beginning. As you know, this main committee did look at input from anyone who wanted to speak to the amendments in March 1988, for many weeks and months.

Dr Geraets: Yes.

Mrs Cunningham: We too are concerned about process, there is no doubt. I appreciate the intelligent viewpoints that you have put forward, not only today but in the past. Some of us follow what you do, including many of your students. So that is a compliment to you.

Dr Geraets: Thank you.

Mrs Cunningham: When we are talking about constitutional discussions, I feel that the public is very frustrated, as are people who are interested in constitutional reform. They see it ongoing for ever and they see other challenges to our country and to our province, whether it be economic or otherwise.

I was interested in your response to the last question when we take a look at laymen and intellectuals advising the government of Canada, or individually the provinces, and I appreciate that. I am not sure how that could possibly happen without somebody somewhere saying that we must take a look at some kind of an ongoing advisory group, because it looks to me as if some of the greatest minds in our country are going to be stuck with these constitutional discussions for the next three decades, given just the amendments that we are looking at, these new amendments. In the new agenda, if you take a look at this, we are meeting every six months on something.

Dr Geraets: Yes, I think you are quite right. As I said during my presentation, I think we should take our time. The worst thing is to be in this what is called popularly pressure-cooking situation. I agree to a large extent with certain things my predecessor has said, but it is not your fault that you are sitting here in this situation. You have to do what you can in the circumstances.

I would be very much in favour of a kind of constituent assembly that would be given a mandate not just to study Senate reform but to study a revision of the entire Constitution to build this new Canada that I was talking about. We have very old stuff in our Constitution and we should reflect, but with peace of mind and not in a pressure situation.

Of course, we had an abnormal situation because the province of Quebec was not participating fully in the constitutional deliberations. I agree that Quebec had to be brought to the table, but the way it was done I think was very bad. Even proponents of the accord, or defenders of the accord, like Gordon Robertson, agree with me that the significant weakness of the original Meech Lake accord was the so-called principle of the equality of the provinces, that except for the "distinct society," whatever was given to Quebec had to be given to all the provinces. I think that is what I call provincialism. We are sort of splitting up. Quebec is distinct, so all provinces are becoming more and more distinct and in this sense weakening the country.

Mrs Cunningham: On that point, if I may, I was interested to take a look at your own amending formula, and given your comments about excessive provincialism, I am curious to see why you approve of a veto.

Dr Geraets: First, I think it is much more acceptable to have a veto of the population. I think Canada is such a geographically immense country with such a diversity of peoples that a Constitution should be acceptable to a majority, not only of all Canadians but a majority in all the major regions of the country. If you have a veto for the people of Quebec or for that matter for the people of Ontario, it is much more acceptable than Premier Bourassa or Premier Peterson having a veto, for all practical purposes, with his majority.

Do not forget, we do not have in any way proportional representation, and I am not personally in favour of it, but we should draw conclusions from that. A legislative majority has been elected usually by a minority of the population.

Your question was about a regional veto.

Mrs Cunningham: You have answered my question.

Dr Geraets: In certain cases, a province is such an important part of Canada that I think the population of that province should have a veto, not to thwart the others, but the Constitution, if it is worked out well, quietly, in a rational way, should be acceptable and should be ratified by a majority of the population in each of the major regions of Canada.

The Chair: Professor, thank you very much for your presentation. Unfortunately, we have run out of time. Thank you for appearing. We thank you for presenting us with your text as well.

Dr Geraets: I wish you good luck. I would be surprised if you went all the way with my suggestions, but I would be very happy if you did and I think many Canadians would as well.

The Chair: I am sure we will be hearing from you again, sir. Thank you.

VICTORIA MASON

The Chair: Our next presenter is Victoria Mason. Miss Mason, you have 20 minutes. We would like you to allow some time for questions, if you can. Commence when you are ready, please.

Miss Mason: I did not get a chance to make a copy of this. The committee clerk said there was no time to run it off and I just finished it last night, so when it is finished, I will have copies for the committee.

The Chair: That will not be necessary. We have Hansard and we will be getting copies of it anyway.

Miss Mason: Thank you very much.

The approval of the Meech Lake accord as proposed last weekend I think will be the final nail in the coffin of Canada. In spite of the fact that the politicians, political scientists, professors and pro-Meech enthusiasts have hyped us to the state of frenzy, I am positive that there is no real danger of Canada breaking up, unless Quebec chooses to separate.

I am really annoyed that we have been manipulated. At the same time, anyone opposed to the Meech Lake accord is made to feel guilty. Canadians have been manipulated by the Prime Minister, the premiers—Mr Peterson's staff report on how to use the media to discredit opponents to the accord—the political scientists, and most particularly the media and in particular the CBC. Today certain media are even running subliminal and not so subliminal video tracks in Quebec to build up frenzy among the people of Quebec, such as the shots of de Gaulle and his "Quebec libre." What do you think of that, Mr Chairman? I think that should be looked at.

The people of Quebec have been manipulated by France from back in the 1960s. I shall quote from an editorial written by no less an authority than Keith Spicer, who was the first Canadian official languages commissioner and then editor of the Ottawa Citizen until he was chairman of the CRTC. This editorial, dated March 1986, was written in the Ottawa Citizen and refers back to the time he spent in France as a journalist and newsman. It reads, in part:

"After Canadian Prime Minister Lester Pearson refused to sell France uranium for military purposes on terms equal to those the federal government granted Washington and London, de Gaulle decided to treat Canada as part of the Anglo-Saxon conspiracy against France. He ordered Foccart to send agents"—and this is Keith Spicer speaking, who was an editor of the Ottawa Citizen, I am not making it up—"including agitators, to Quebec and even French-speaking areas of Canada outside Quebec to put heat on the federal government.

"The heat included actively inciting the secession of Quebec from Canada....Some of the agents were simply mischief-makers such as the minor-league pedlar of French comic books and records, Philippe Rossillon, whom Trudeau ridiculed as a 'more or less secret agent.' Others, who offered money and seditious advice to some separatists, were less innocent.

"Not even at the worst times of de Gaulle's meddling in Canadian affairs did the Canadian government dare reveal what it knew of these activities."

Can someone please tell me just who is building up the frenzy and panic and why? Can anyone on this committee tell me why? Why are the Prime Minister and his friends not getting to the bottom of events like de Gaulle in Quebec and the video tracks now being run in Quebec to frenzy up the people of Quebec?

Of course, the PM is even bragging to the media how he "rolled the dice" on Canada's future. I do not wish to be a roll of the dice by anyone, most especially by the politicians with whom we entrust our country. If the PM has rolled the dice on this occasion, how many other times has he been rolling the dice on other important issues? How can you elected politicians, elected by the people of Ontario, let yourselves be manipulated by this kind of tactic? By your agreeing to go through this exercise in futility, you are condoning the PM's actions.

1000

I intend to fight back, because what we desperately need right now is a committee for a democratic Constitution, not an engineered Constitution. The Constitution of Canada is not a teeter-totter with the balance going to the smoother operator or the heavier partner. It should not be engineered by boiler-room tactics. Is it not illegal to have boiler-room operations for selling stocks? Then why is it legal to have a boiler-room Constitution? The Constitution belongs to the people of Canada, not to the politicians and manipulators and the media.

The late President Kennedy, in a book entitled A Nation of Immigrants, said that Alexis de Tocqueville, a young French aristocrat, crossed the ocean to try to understand the implica-

tions for European civilization of the new experiment in democracy on the far side of the Atlantic. Kennedy said:

"Tocqueville was fascinated by what he saw. He was impressed most of all by the spirit of equality that pervades the life and customs of the people. Though he had reservations about some of expressions of the spirit, he could discern its workings in every aspect of society—in politics, business, personal relations, culture. This commitment to equality was a striking contrast to the class-ridden society of Europe," which I think we have got here in Canada.

We are all descended from immigrants; everyone, of course, except the native peoples, and they are the only ones who have been left out of this whole process. I am ashamed to say that.

A prophetic line in an editorial written in the Toronto Evening News, 1885, and reprinted in a book entitled Canadian History and Documents, 1763-1966, reads, "With Quebec holding the balance of power, Canada isn't safe for a moment." Then they say, "The Constitution must be altered so as to deprive these politicians of their power or else Confederation will have to go." That was in 1885. Now, 105 years later, the pendulum is swinging, not away from Quebec domination but in fact towards more power for Quebec. History repeats itself.

On 10 March 1967, the Toronto Star reported that Jean Chrétien, then parliamentary secretary to the Minister of Finance, said, "Nothing can be done without the agreement of the French Canadian ministers."

Obviously the Prime Minister is not satisfied with the Quebec ministers controlling Canada. He has manipulated and blackmailed Canadians into believing that we are guilty if the Meech accord is rejected. He is dictating a Constitution, a Constitution arrived at by boiler-room tactics without the native peoples being represented and a promise of consideration some time in the future. Why not reverse the process and put Quebec on a promise in the future and give the native peoples their hearing and incorporate their rights into the Constitution first?

The PM's dictatorial style of amending the Constitution is a frightening instrument to inflict on a free people. It is a formula to wreck Canada, not to unite it. My concerns with the style of manoeuvring that has gone on in the past short time are unfit for human ears. However, I must tell you why I am driven to be here before the committee. I want to tell you.

Over and over again, we have been bombarded that the accord is Quebec's turn at the constitutional table. Quebec's turn or not, the Meech Lake accord will do nothing to keep Quebec from separating. On 18 June 1987, Premier Bourassa addressed the Quebec National Assembly. Here are some excerpts from his speech, and I will give you a copy:

"Quebec has come into the 1987 constitutional negotiations as a major winner. The gains are substantial. The Constitution will recognize Quebec as a distinct society." Fine.

"The Constitution will give Quebec the means to preserve and promote our French society....

"With the recognition of our distinct society we have achieved a major gain, and one that is not merely symbolic, because the Constitution of our country must now be interpreted in accordance with this recognition." He must know something we do not.

"As we have so often said, we did not want a laboriously spelled out definition, for the simple reason that it would confine and hamper the National Assembly in promoting this uniqueness....

"It cannot be stressed too strongly that the entire Constitution, including the charter, will"—not may, will—"be interpreted and applied in the light of the section proclaiming our distinctiveness as a society. As a result, in the exercise of our legislative jurisdiction we will be able to consolidate what has already been achieved and gain new ground....

"We have managed to provide constitutional underpinnings for the preservation and promotion of the French character of Quebec." Where is he mentioning Canada? Where has he mentioned Canada?

"We have taken special precautions to ensure that recognition of Quebec's right to opt out will not mean legal recognition of a federal state's right to set up programs in provincial areas of jurisdiction." Take the money and run.

"We have gained recognition of our right of veto, our right to say no to any amendment that goes against the interests of Quebec." What is Canada first?

"A committee of this House"—this is something you have got to listen to—"looked into Quebec's right to self-determination and questions were raised about what would become of that right." Let me tell you what it will do.

He says finally:

"The resolution (of the Liberal Party) states that the Liberal Party of Quebec recognizes Quebec's right to determine its internal constitution"—fine—"and to express freely its desire to maintain or to terminate the Canadian federal union. In short, it recognizes the right of the people to determine freely their own future."

And he says further on, "It is still our platform and the adoption of the Meech Lake accord makes no difference to it at all." So who is wagging the dog?

This speech was printed in the English translation in Canadian Parliamentary Review, Autumn 1987. Note the many references to Quebec. Once, did he ever mention Canada? No.

During the Prime Minister's marathon "roll of the dice" discussions last week, we were fed daily gruel by the Canadian Broadcasting Corp. It was reported that some renowned jurists had given an opinion on the definition of "distinct society." A little later on, we were told that another eminent group, this time eminent lawyers, had given another opinion on "distinct society."

A question to you people: How can there be a legal definition of an abstract—distinct society—if there is no definition of what it really means? Tell me what it means. Nobody knows. They give opinions on abstracts. I do not go along with that. I did work for judges, and you have to have something in front of you to define it.

I have followed Canadian constitutional and parliamentary affairs for many years. I worked in a government office for some time, particularly in 1970. I am surprised that no one has really thought of raising the fear-mongering by telling Canadians over and over again about the Quebec crisis, so-called.

I will tell you, a soldier with a machine-gun sat at the door of my office. I would not say a word, but he sat there clicking his machine-gun every time somebody went by. How do you think I felt? I was under a state of siege, and nobody has even thought of—it is a wonder they have not brought that up to say, "Look, you're going to be under siege." This was a hyped-up event to make Mr Trudeau look like a hero. We now have Mr Mulroney using manipulation, blackmail, threats and a "roll of the dice" to browbeat Canadians to approve his Meech accord.

My response is that the people of Canada have a right to an open dialogue with the government and to be involved in the day-to-day negotiations and not subjected to a labour relations bargaining marathon. Prisoners have claimed cruel and unusual punishment for lesser pressures.

In Federalism for the Future, Lester Pearson said, "In embarking on a constitutional reassessment, we must not allow ourselves to make the mistake of assuming that a changed Constitution is a form of magic that can substitute for a change in attitude and action."

Even Pierre Trudeau, in his book A Canadian Charter of Human Rights, before the charter came, referred to the American Declaration of Independence, which reads, in part, "that all men are created equal...that to ensure these rights governments are instituted among men deriving their just powers from the consent of the governed." That is the gist of what Mr Trudeau quoted.

We in Ontario have not, to the best of my knowledge, ever been asked to participate in any form of dialogue with our government asking for our opinions or input on the Meech accord. But now we are being asked to meet with a committee which is being pressured to bring home a report which will support what? The accord has already been approved by the province of Ontario. Why are we here? What is being accomplished by this hearing? Can somebody tell me what is being accomplished? I do not know.

I do not support any government, federal, provincial or municipal, giving in to the threats of blackmail, intimidation and the laying of guilt on opponents, and that is done time and again municipally. The accord would set one part of Canada against another and create animosity and intolerance. The panic situation created by the PM and the Premiers certainly will not make for better relations. Tolerance has always been a trademark of people of British descent. Now we are being accused of being racist, bigots and all the names that are being heaped on the rest of Canada to accept Quebec.

Why did Quebeckers not participate in the 1982 constitutional talks? Because Lévesque chose not to. Who forced them to stay away? That is what I want to know. Who forced them to stay away? Lévesque said, "No, we're not going," and now we have to pick up the pieces? Sorry.

1010

In 1984 Mr Mulroney needed the support of the Quebeckers to get elected Prime Minister and now he must pay the piper, but not at the expense of the people of Canada. If he has a debt to Quebec, that is his responsibility, not the responsibility of Canadians. Quite frankly, for all intents and purposes Quebec is already separate: the National Assembly, not legislature; referring to Quebec as a state, not a province; its own legal system; overriding the Supreme Court; showing disregard for the Canadian legal system and on and on. So you see, these are hollow threats of separation, with Quebec only wanting more from Canada.

The fact that English-speaking Canadians have been conned on the status of Quebec on Confederation is clearly expressed by Professor Donald Creighton—I think you have all heard of him—in an article in Saturday Night magazine in September 1966.

This very sage man wrote: "The advocates of French Canadian nationalism have used every conceivable form of persuasion, compulsion, shock and menace to compel English Canadians to buy a particular view of Confederation and of French Canada's place in it. This prolonged siege of promotion, like every other well-organized campaign of commercial pressure, has certainly had its conquests. A good many English Canadians faced with this rapid"—maybe it should be "rabid," I suppose—"interminable flow of sales talk have acted as simple, gullible, badly informed consumers often do—they have bought the product." This was in 1966 by Professor Creighton. I think you all know him.

Southam News columnist Don McGillivray, on 17 April 1990 in an article entitled Quebec Can't Afford to Leave, said: "Financially, it would be a good deal for Canada...Quebec is still our largest have-not province" and, I add in here, despite what is happening in Labrador. "One result of this have-not status is that the federal government spends more on Quebec than it collects in revenue in that province. Stats Canada's latest estimates say the difference was $32.4 billion in the first five years of the Mulroney government." I guess he is paying back Quebec.

"That's an average of about $6.5 billion a year. In other words, the federal deficit would have been much lower if Quebec had cut the cable and drifted away in 1984. By the magic of compound interest...just by leaving Quebec would have enabled the rest of Canada to cut its deficit in half. By the end of 10 years the cumulative saving would have built up to $103 billion, so Canada's national debt would be more than $100 billion less than if Quebec had stayed."

If your committee had any power to make recommendations on the accord, I would say that the accord must be rejected and new negotiations undertaken so that each province is treated equally and no preference shown. Mr Bourassa, in his address to the National Assembly, makes it perfectly clear that Quebec really wants to be separate and still depend on the rest of Canada for maintenance payments. I think that is unacceptable.

Shakespeare said, "All the world's a stage and all the men and women merely players." You know that one. So we have the politicians on the stage trying to outdo and upstage each other, but no one listens to the mere ordinary folks.

History certainly does repeat itself. One hundred years ago on 6 March 1890 the following editorial appeared in a small newspaper. It was headed The Dual Language Debate:

"During the progress of the dual language debate, words have been spoken and published in the press throughout the country that will rankle"—this is 1890—"in the hearts and foment ill feelings between the two races in Canada, a feeling which at the present time is only too strong between the two races in the provinces of Quebec and Ontario. Great responsibility will now rest with aspiring politicians of both races, how they use these prejudices and work upon the feelings of the people in both provinces for the purpose of gaining their own ends and raising themselves to power." One hundred years ago.

"It behooves the people of this Canada of ours, French and English, to stand shoulder to shoulder, forgetting the differences of opinion which may exist between us and only remembering the great love we bear for our country, to push forward in the great work of building up a nationality in Canada which shall be able to challenge the applause and admiration of the world. Then the time will have come in the history of Canada when the proudest words a citizen of this country can utter will be 'I am a Canadian.'"

At the Confederation meetings in Charlottetown, Macdonald, pointing to the US experience where all power not specifically ceded to the central government had remained vested in the separate states, said: "The dangers that have arisen from this system we will avoid if we can agree upon forming a strong central government, a great legislature, a constitution for union which will have all the rights of sovereignty except those that are given to the local government. I hope that we will have

a strong central government. If we cannot do this, we shall not be able to carry out the end we have in view."

Now we have the Meech accord decentralizing federal power and giving more powers to the provinces. That would weaken the central federal government. As Lester Pearson said in Federalism for the Future: "No one can be sure what the fate of the colonies would have been had they not federated. But one thing we can be sure of: divided, small, exposed and weak they could never have achieved what we enjoy today."

Mr Chairman, the Prime Minister should remember, and I think you should take this under advisement, that he is not engineering a labour accord but a Constitution. He should aim to have a happy union and not create discord and turn province against province. The answer is to scrap the accord, give a length of breathing time and start again. Allow time for Canadians to get involved.

The Chair: Thank you. We have time for one question.

Miss Mason: I have my history books in the back if you want them.

The Chair: Your presentation was very thoughtful and well presented.

Miss Mason: I shall give you copies.

The Chair: We will have it on Hansard.

Mr Allen: I guess there are a lot of questions one could ask, but the one that is most relevant arises out of your final advice. Do you imagine that if we in fact were to put it all to one side and start again we would be starting back at some square zero in the past or would we be very quickly into a radically different situation in Canada in which there would have to be a much more radical approach to the Constitution, and even in terms of the kind of concerns that Dr Geraets was putting to us?

Miss Mason: I did not hear Dr Geraets, I am sorry.

Mr Allen: He was proposing a much franker recognition of the multinational character of Canada. In other words, the time that might follow might be a time in which there would be much more regionalizing and a vision in Canada that would put us at quite a different state of constitutional debate even than we have been at in the past.

Miss Mason: And weaken the Constitution, because I still believe we should have a strong federal government. I really believe it—I worked in the government—and not because I am biased. You have to have a strong central government; otherwise everybody is going to do his own thing. How can you have conformity in our laws?

Quebec overriding the Supreme Court, I think that is the ultimate insult; no respect for the laws. If everybody in Canada is going to do that—

Mr Allen: I am sorry, Quebec overriding?

Miss Mason: The Supreme Court of Canada's decision on Bill 101.

Mr Allen: I thought that was a result of the Constitution Act of 1982 we all agreed to.

Miss Mason: No, you are talking about regionalization.

Mr Allen: Yes.

Miss Mason: I think this is what will happen from it. If you want regionalization, we are going to have these kinds of discrepancies, everybody going his own way and, as a result, weaken the central government.

Mr Allen: I understand the ideal, but what I am asking you is how you avoid it, given the post-Meech situation where we just simply have no decision.

Miss Mason: No, that is not the point. You are trying to put words in my mouth.

Mr Allen: No, I am just asking you a question.

Miss Mason: I am trying to tell you that this whole thing has been pushed on us, manipulated. We have been bamboozled. I think we have to stand back, take a look, ask people in Canada to write. What is the big rush, I ask you, to have this Constitution now? What is the rush? We have to have all people involved. You want multiculturalists. We believe Quebec. Somebody else believes Newfoundland. The Northwest Territories are completely overlooked. I feel that you cannot rush a thing and then expect everybody to accept it. It is not a school exam.

The Chair: On that note, we have run out of time. Thank you very much, Miss Mason.

1020

INUIT TAPIRISAT OF CANADA

The Chair: Our next presenter is John Amagoalik, representing the Inuit Tapirisat of Canada. We have allowed half an hour for your presentation. We hope you will allow some time for questions.

Mr Amagoalik: I have a plane to catch, so I will not be very long. I will try to allow some time for questions.

First of all, I think Elijah Harper has slapped the first ministers in the face, and all of them should be saying: "Thank you. We really needed that." The Inuit have always had the opinion, ever since Meech Lake was introduced to the country, that Canada was stronger than Meech. We are convinced that it will survive this so-called crisis.

The events in Manitoba in the last few days have really brought the issue of aboriginal rights into sharp focus in Canada. In very simple language, I want to point out what the aboriginal peoples' position is. The aboriginal people want at least the same level of recognition as the people of Quebec. Very simply, that is our position. We also think the myth that there are two founding peoples must be put to rest. One of the main reasons why Meech Lake is a dying goose is that it does not reflect the reality of Canada.

We think it is cynical of Quebec nationalists to claim that they are a distinct society and not extend the same recognition to aboriginal people. If there are criteria for being distinct, be they language, culture, history, traditions, way of life, the aboriginal people qualify in all of them. It is also cynical of Quebec to claim the right of self-determination and, at the same time, deny the Northwest Territories the right to become provinces.

Throughout this whole process in the last few years, many people have talked about humiliation. Many people claim that Quebec has been humiliated by certain events and by certain attitudes. Other Canadians have claimed to be humiliated. They have not begun to understand the meaning of the word. Aboriginal people have been humiliated over the past 300 years. We know what it means. We know what it feels like. The poverty that we have to live with, the unemployment, the

highest suicide rate in Canada, not being treated equal to the English and French—that is humiliation.

We need a fundamental change in thinking in Canada when it comes to aboriginal peoples. It is no longer good enough to have a football team named after the Eskimos and they are ignored in the fundamental document of this nation. Canada must forge a new partnership, and that partnership cannot exclude the aboriginal peoples. That is our basic message.

I have a short comment on the process of the first ministers' conferences. We have lived with the FMCs for about 10 years now. It has become an institution in Canada, heavily entrenched. Unfortunately, the FMC has become Canada's version of the politburo. Eleven people go into a room, they lock themselves in, they do not let anybody know what they are talking about, they come out with a decision and say: "This is it. This is what the country has to live with now." That is not acceptable. The practice of making decisions for the nation behind closed doors has to end. That basically is the Inuit message.

Mr Wildman: I have two short questions, but in preamble I want to say, Mr Amagoalik, I appreciate your coming. I agree very much with what you have had to say. I certainly agree with your tribute to Elijah Harper.

First, is it not your understanding that after the Meech Lake accord was reached in 1987 by the first ministers, the Prime Minister and the first ministers made a commitment to the aboriginal people of Canada that the constitutional recognition of aboriginal rights and self-government would be next on the constitutional agenda?

Mr Amagoalik: That was our understanding at the time, yes.

Mr Wildman: Now we are told that the next constitutional matter to be dealt with on the agenda is Senate reform. How do you react to that in relation to the earlier commitment to the aboriginal people?

Mr Amagoalik: We have been saying for some time now that the priority of business in Canada is wrong. It is wrong to try and forge a relationship between the English and French. That is not the first priority of this nation. The first priority of this nation is to deal with its aboriginal people and to bring them into Confederation. The first order of business is to include the aboriginal peoples in the constitutional framework of this nation. The priority should not be the Senate or fisheries; it should be the first peoples of Canada.

Mr Wildman: This is my final question to you because I know the time frame we have. You know that the Ontario Legislature has already ratified the Meech Lake accord.

Mr Amagoalik: Yes, I do.

Mr Wildman: So would you support a proposal from this committee if this committee in its report were to say that in view of the need to deal with aboriginal rights and in view of Elijah Harper's stand in Manitoba, the deadline for the ratification of Meech should be extended, with the commitment that the question of aboriginal rights and self-government be first on the agenda, prior to a final ratification of the Meech Lake accord?

Mr Amagoalik: I think that would make sense. As it is right now, we have four men from the Prime Minister's office going off to Manitoba to negotiate with the Manitoba chiefs. So at this moment it is a negotiation between two bodies. I think the only proper way to deal with it would be extend the deadline. Give it a few months, or a year if necessary, so that all representatives of all aboriginal peoples in Canada could be at the table. If that were to happen, then the process would have more legitimacy than more closed-door negotiations.

Ms Oddie Munro: Thank you for appearing before the committee. Are you saying then that it is your sense right now—and things change all the time—that the aboriginal peoples would be willing to continue the Meech Lake accord debates if the time is extended? Or is it your feeling that they want the accord scrapped and started over again?

Mr Amagoalik: We have always stated right from the beginning that our first preference is to fix Meech Lake, to make it better. But in the absence of time to do this, it seems that the aboriginal peoples of Canada, especially the Manitoba chiefs, have been given no choice but to kill the accord because we are running out of time. If we are given enough time, then of course we are willing to talk about anything that is put on the table.

Mr Jackson: It strikes me that if two or three premiers in this country can talk about certainty as a means of hesitation about Meech Lake, I think aboriginal peoples have an equal right to express concern about certainty.

Instead of a question directly at the deputant, maybe I could ask counsel if he could clarify for us very briefly this concept of how Senate reform will take clear priority over aboriginal needs at first ministers' talks. Can you just direct us to the document to make it abundantly clear to committee members? I am not challenging Mr Wildman's suggestion; I just would like that clarified for me. I think I agree with him.

Mr Kaye: At the top of page 2 of the final communiqué, there is a reference to the Prime Minister and the premiers' undertaking that "Senate reform will be the key constitutional priority until comprehensive reform is achieved."

Mr Jackson: I wanted to bring that to everybody's attention. I thought it was just one way of doing it.

Mr Allen: Let me pick up on that. There was the same commitment in 1987, the same time reference that Mr Wildman made reference to, so I am a little confused about the conflicting priorities of 1987.

1030

I guess I am concerned at a couple of levels. Several aboriginal groups came before this committee when we had our original hearings and at that point in time they were asked, as all delegations were, by members of the committee what the bottom line was. We certainly recognized and appreciated that the aboriginal round had failed. You made certain requests of us with regard to the reinstatement, a companion resolution, which we took verbatim and put into our own companion resolutions.

When we asked at that time whether the native peoples of Ontario or Canada were prepared to stand in the way of the resolution on Meech Lake and the recognition of Quebec as a distinct society, before any of that was accomplished, we were told on every occasion that your organizations would not do that. I really am puzzled at the change in strategy at this point in time. What has led us to that? I appreciate your concern that the first people should be the first recognized as distinctive and fundamental to Canada, but what led to that change of position?

Mr Amagoalik: What changed that, I think, is the fact that we were expecting to be treated in a fairer way in this whole process. We did not predict that we would have to beg to go inside the building. We did not know at the time that we would be out on the sidewalk wondering what was going on. We thought we would be participants at the negotiating table. That is first.

Second, we have now heard from people from Quebec. Ministers of the government of Quebec over the last couple of weeks have now made it very clear that they are not prepared to give us the same kind of recognition they are asking Canadians to give to them. We do not agree with that. They have made it very clear to us—they have said this right to our face—"We will never give up our veto over the north." They have pointed that out.

Faced with those facts, our attitudes have to change accordingly.

Mr Allen: You are aware, I presume, that Mr Rémillard as recently as the weekend has stated that Quebec is solidly in favour of self-determination for native people. Inasmuch as for this last week and for this current week native peoples have in fact had an immense amount of power at their disposal, but if Meech Lake fails as of 24 June that power essentially evaporates, given the totally changed situation, would it not be wiser to use this time—I just suggest this because it seems to me to be wiser; it may not be to you—to nail down those commitments in a much more explicit and public way in order to set the stage for the post-Meech discussions?

Mr Amagoalik: If we had enough time to do this and to do it properly, I suppose it could probably work, but the aboriginal people of Canada do not really feel under pressure to help Meech Lake pass. We do not really feel that pressure. We get threats that interest rates are going to go up and the financial community is going to get nervous. Those things do not affect us directly because we are at the bottom of the economic ladder. Interest rates—we do not lose sleep over those things.

Mr Allen: I understand that, but you are under some pressure for your own agenda to succeed, I would think, and that is what I was trying to focus on, your agenda and how it best succeeds.

Mr Amagoalik: Yes, we are. Incidentally, Elijah Harper would not be wielding this much power if the Prime Minister had not chosen to gamble with the future of Canada.

Mrs Cunningham: I have just a clarification on the aboriginal constitutional issues. At the bottom of page 2, if you are familiar with this document, it says, "First ministers' constitutional conferences to be held once every three years, the first to be held within one year of proclamation." What does that mean to you given the time frame we are in now? What does that mean to you?

Mr Amagoalik: We do not know when that is going to kick in, because as has been pointed out the agreement also points out that Senate reform is going to be a priority, and we do not know when our issue will come on the table. You have to read that section very carefully. We are not even being given a dedicated process. All it says is that aboriginal matters will be on the agenda. There could be five or six others. It depends on the Prime Minister of the day.

The Chair: Thank you for coming here. We appreciate it.

JOHN WHYTE

The Chair: Our next presenter is Dean John Whyte from the faculty of law at Queen's University. Welcome. We have allowed half an hour for your presentation. We would hope that you would leave some time for questions.

Mr Whyte: I think I can do that.

The political agreement we are meeting here today to examine, the constitutional agreement of 1990, is the product of a process that is rooted in callous disregard for democratic principles. It is also, that particular agreement, virtually without substance. It is an agreement from which I must dissent, as I do also from its parent agreement, the Meech Lake accord. The Meech Lake accord, of course, is not also without substance. It contains substance that in my view has the potential to do harm to Canada and I want to state something about that in due course.

First of all, I want to talk about your enterprise. It is not, to my mind, similarly dishonourable. The hearings are an attempt to restore to our constitutional politics genuine political debate. They represent a commitment, albeit a small commitment given the time available to you and the timetable you are on, to free speech, the functions of which are to promote truth and to facilitate the establishment of mature political debate.

Free speech allows members in a political society to find each other in dissent. It allows those who dissent to discover that they are not alone, that they are not perverse, that they are not marginal, that they hold views which are shared with others, and that joining together they have a chance of shaping public outcomes. Too often those in power conspire to limit debate, to remove the dissent from the agenda, to structure the processes of choice so as to exclude participation for those who wish to disagree, to challenge and to amend. This is certainly the apparent story, and I believe the real story, of the recent first ministers' conference. Dissenters were not allowed voice or comfort or allies.

That is why I have come today, because I view this hearing to be an exercise in democracy and I thank you for it. It allows me to let my voice join those other singular voices in Canada who question the strength of our country under Meech Lake. It allows my voice to join the single no from Elijah Harper in last week's Manitoba Legislative Assembly. It allows me to join other Canadians who want to say they are harbouring doubts. They hold views about the legitimacy of the accord and the future of this country. I come to express dissent from a process in which debate seems to have been banished and reduced to media-spinning, psychological coercion and exclusion of popular choice.

Let me get on to the merits or substance of what I want to say. The challenge of course is to decide whether the Meech Lake accord and this particular add-on resolution to the Meech Lake accord are something that will be good for Canada, at least in so far as they prevent Canada from going down a route that will lead to the disintegration of the country as we know it.

We have been told that the putting in place of the Meech Lake accord is the single most important act of national preservation facing us for some years, and that in particular the offer by Premier Peterson to give six of Ontario's Senate seats is an act of unparalleled statesmanship designed to hold together a disintegrating group of first ministers so that they may ultimately come to some common consensus about how to save Meech Lake. Those are the propositions I wish to dissent from.

1040

First, I want to make a comment about the process. I have already said much about the process, but I want to sharpen it by saying this thing: Canada is a political choice. It is not a nation that exists by virtue of its history or its geography or even its meteorology or its trade or its linguistic makeup or its ethnic makeup. It is an idea that needs constantly to be given rebirth, this commitment to work together as a nation, because of what as a nation it will do for those who find themselves on the border, and even more significantly, what as a nation it will do to represent to the world the possibility of accommodating pluralism, living with difference, creating a national politic in difficult situations.

It gives hope to the idea of political stability, because Canada is a nation that stays together even when there are many pressures in the world for it, like many other nations, to fragment and fall apart. It is important that the nations of this world present the face of stability, and Canada does that.

I want to say that the Canadian nation is, as I said, a product of a political choice, and it demands political trust. It demands from the members of the Canadian society a belief that Canada is a political experiment in which they participate and in which their commitment to the Canadian nation is capable of reflection, capable of being reflected, capable of voice, capable of being heard.

I think quite simply that the Meech Lake accord, starting at Meech Lake in late April 1987, continuing through the night at the Langevin Block on 1 June 1987 and continuing 14 or 15 days ago in the conference centre across the road, has demonstrated to Canadians that the political process of this country, and particularly the political process that is directed to nation-building, is not one in which they legitimately have trust. When Canadians conclude that they cannot legitimately trust the processes because they are marked by lies and media-spinning and coercion, then the commitment Canadians have to preserving the political idea of Canada is gone.

The single biggest damage Meech Lake is going to do to this nation is to rob Canadians of the political commitment that is the precondition of the continuation of the nation. I think it is a far larger threat to our national integrity and our national stability than the process of negotiating with the province of Quebec new arrangements within the Canadian community.

The other thing is that I want to talk a little bit about the particular substantive problem I have with the Meech Lake accord and with Premier Peterson's act of statesmanship. I want to talk about Meech Lake and what Premier Peterson's offer does to the single most important institution we have as a nation, the institution in which we conduct our national political processes; that is, the Parliament of Canada.

All during the first ministers' conference of two weeks ago we heard first ministers and reporters talking about the Senate problem, the reform of the Senate and can there be agreement on Senate reform. There is something benign or innocuous about Senate reform, and the reason is that the Senate does not seem to us to be the centre of our political life. It does not seem to us to be that important. It is a little bit marginalized. It is less marginalized since Allan MacEachen has taken over the levers of power in the Senate, but it is still a marginalized institution. It is not where the national political accommodation is worked out day after day.

When we talk about Senate reform, we talk about something that does not impact on our lives in a tremendously fundamental and important way. But we should understand that the Meech Lake accord is not about Senate reform and that the constitutional agreement of 1990 is not about Senate reform; it is about the reform of Parliament.

We must understand that Meech Lake changes Parliament, not the Senate. It changes Parliament because it takes one half of the legislative chambers of Parliament, a half that is equally powerful with the elected House of Commons and says that the political constituency to which its members must henceforth be in thrall is the political constituency that is defined in provincial capitals. So a chamber of the Parliament of Canada, a chamber that has veto authority, that has as much authority as the House of Commons, is now to conduct its politics under Meech Lake with a membership which is, at least prima facie, in thrall to the views from provincial capitals. It is a very radical, fundamental change to the Constitution of the Parliament of Canada.

Now, I know that the 1990 constitutional agreement, which was signed on 9 June, says that the first ministers are committed to examining reform of the Senate of Canada so that it can try to achieve equity or equality and an elected Senate. My view is that those are not genuine undertakings. Those undertakings were not given in the realistic expectation that they would materialize over the next five years. It is not likely that we will achieve over the next five years a reform of the Senate that goes towards either of those objects.

The reason for this is that the political imperatives in provincial capitals are such that provincial capitals are not free, in our present Canadian state, to give back political autonomy to the centre at the expense of the political authority which is enjoyed within the provinces.

As we know from the constitutional discussions from 1970 in Victoria, from 1979 through 1982 in Ottawa and in many other centres, in 1987 in Ottawa and again in 1990 in Ottawa, provincial capitals and provincial premiers do not come to these discussions—with the exception of Premier Peterson's six senators—with the idea of diminishing their political authority for the sake of Canada. These are not constitutional negotiations which have been marked by people standing up for Canada.

If I may be even more blunt, regardless of the will to reform the Parliament of Canada by Premier Getty, by Premier Peterson and so forth, I think it is absolutely clear that no Premier of the province of Quebec is at political liberty to squander that province's political authority to shape its own destiny for the purposes of creating a different political order at the centre of Canada.

Therefore, I do not think constitutional reform of the Senate is on the books. What is on the books under Meech Lake is a provincially appointed Senate, a bad situation. Furthermore, a situation which is disruptive if not destructive of the national political processes, is disruptive if not destructive of the capacity of Canada to act as a self-determining nation, is being compounded, I believe, by Premier Peterson's gesture. It was not, in the balance, a wise gesture.

When Canada gets a Senate the members of which are appointed from provincial capitals, or nominated from provincial capitals to be appointed by the Prime Minister of Canada—we already know the levers it is possible to pull to constrain that ultimate appointment power—when we have a Senate like that, we will have something akin to a consociational democracy. We will have something like a confederation, and it is important in a confederation that there be balances of power, that there be tradeoffs, that there be capacities for the various constituencies in that Senate to deal with each other and the incentive to deal with each other. One of the concerns one has about the 24

Senate members from Quebec, which dominates all other representations, is that the lack of balanced conditions which lead to consensus will be diminished.

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Furthermore, it will be an institution in which Quebec will have a powerful and significant role. Again, properly and correctly, premiers of Quebec will feel that they are constrained by their own political constituencies from devolving power back into the centre of Canada. So I think the Meech Lake Senate is itself a danger to the future political processes of Canada. The Peterson gesture compounds that danger.

A word about the Senate: What we do know about senates which represent very distinct political power centres outside the centre of the nation—that is, in this case, represent provincial capitals—is that they do proceed by way of log-rolling, or dealing, or calculating advantage on an exchange basis. They do not normally proceed by way of marching to a vision of a national polity or marching to a vision of the Canadian nation state. That may well happen if we have an elected Senate. If elected, we will at least have party politics, and national parties in this country at least attempt to be national. The trouble with the Senate which is appointed by provincial capitals is that there is no party discipline; there is only the members' discipline, and they come from provincial capitals which do not attempt to be national.

In a nation state it is important that the national capital be governed by people whose mandate is to set policy according to ideas of the nation, not ideas of the region or province. So I think that in the end the Meech Lake accord represents cause for a deep lament for Canada, for what it does for the commitment of ordinary Canadians to the nation state, for what it does for the trust that citizens of Canada have in the national political processes and for what it does for the very instruments by which our national self-determination will be expressed; that is, what it does to the Parliament of Canada.

Mr Polsinelli: Thank you, Dean Whyte, for your presentation. I guess we have, or at least I have heard it expressed on a number of occasions by a number of people, a general agreement on the general dissatisfaction with the process that led to the formulation of this agreement and also the one in 1987, the Meech Lake accord. I am disturbed by some of your comments, in that you indicated this agreement is rooted in a callous disregard for democratic principles. I have heard it argued by the Prime Minister of Canada and other historians that in fact the process has not changed very much in the last 123 years. This was the same process that was used in 1982, it was the same process that was used by the Fathers of Confederation in arriving at the British North America Act in 1867 and in fact it was the same process that was used by the Americans in formulating their Constitution in 1798. Now I am not an historian. Perhaps you can disabuse me of the notion that our entire Constitution and the American Constitution are founded on a callous disregard for democratic principles.

Mr Whyte: I want to make a current-day comment on the process and a historical comment in response to your question and Prime Minister Mulroney's observation.

One thing I do want to say is that we were told by virtually every first minister that this process of making a Constitution was an improper process, to be regretted and not to be repeated. They did not say why they were so ashamed of their process, but they all admitted to shame. What could be the basis of their shame, I think, was simply the exclusion of popular participation in the choices that were being made, not that participation is all that possible at certain crunch moments. But it was not just the exclusion of participation; it was the exclusion of information except information which spin masters spun to the CBC. They knew that was what was happening, they knew it was not fair to the people of Canada and they expressed shame.

Mind you, it was crocodile shame in the sense that it was followed immediately by gloating the following Monday, 11 June, about what a successful process it was and then, of course, the resort to the legitimacy of the process through its historical antecedents. We have had both shame and pride. No wonder Canadians are confused about the question of good faith of their leaders.

On the historical perspective you bring, I refer to Senator Eugene Forsey's letter in the Globe and Mail this morning saying that the 1867 process was in legislative chambers open to the public with over 1,000 pages of public debate available. I refer specifically to a process that I know well, which was the 1979-82 process, and I will say about that process that it was marked constantly by the congregation of first ministers or ministers responsible for the Constitution, the Jean Chrétien-Roy Romanow show that happened in the summer of 1980, marked constantly by periods of openness, people going into an open session so that the first ministers or the ministers had a chance to express their wishes, their values, their priorities, the stances they would be taking and the problems they saw. There was a reasonably constant reference back to the public. Furthermore, every single one of those references back took place in the context of original bargaining; that is, when people saw what was being done and it was reported back, the deal was not closed. They were invited to comment and they commented. You remember that when the first ministers concluded in September 1980 that they could not come to an agreement, the reasons for that were eminently public. That was played out in public and people had a sense of where the premiers stood.

The Prime Minister of Canada issued his proposal on 4 October and then began a tremendously lengthy and productive public hearing session. It is true that the November 1981 closure was marked with just two public sessions, as opposed to zero this time. But when it concluded, and it was backroom bargaining and I do not say that it was pretty, it concluded with a document which was subject to approval through some process and nobody claimed that process was so sacred that nothing could be touched. Actually, that is a lie. Some people did say that, but it was not given much credit. It was touched, and Bob Sheppard this morning in the Globe and Mail reminded us how it was touched. Section 28 was reformed and aboriginal rights were reformed.

This process has been more closed down, has been more exclusionary, has involved more alienation from political processes of the strength of this country; that is, the minds of its people.

Mr Polsinelli: One of the ways, I think, that the first ministers are attempting to make the process better is through the establishment of a national commission. In terms of dealing with Senate reform, they are going to be appointing a Senate reform commission. What do you think of that as an avenue of opening up the process?

Mr Whyte: I think that is fine. I appeared before this Legislature's committee on the Senate because, in truth, I am a big fan of Senate reform. How do I square that with saying: "Senate reform is not here. Let's just forget it and walk away?" I do think there is a general national concern about the efficacy

of representative democracy. The Senate may well be an agency which can re-establish some confidence in representative democracy and we should not throw Senate reform away as an instrument for doing that. I think it is more important to do Senate reform for the purposes of improving democratic participation than it is for improving regionalization, but we will debate about that. So I am not hostile to a national program for examining Senate alternatives and examining how a Senate gets created. I do not think that at the end of the day the Senate reforms that will take place will be accepted to be an equal Senate. I even doubt whether an elected Senate is possible, although it makes eminent good sense.

I want again to make a sharp point, that it is not the case that the people of Quebec—and I want to say the government of Quebec—believe that the Quebec interest in Confederation is equally served through the democratic participation of its people in the central processes as it is through the participation of the central processes of its government. That is why, we explained, Quebec has been successful in convincing us for years that it did not participate in 1982 although it participated through 60-some members of Parliament, because for Quebec the real participation that counts, under the two-nations kind of structure, is the participation that comes from its government. I do not think that the governmental role in Senate nomination will be squandered to elections.

Mr Allen: Thank you very much. I want to say I appreciate the way John Whyte has come and the perspective from which he has viewed his participation, because while it is certainly true that this committee has very limited capacity to affect outcomes under the present dynamics of the process, it is critically important that every opportunity for public hearings, for public presentation and for public debate be seized and that every opportunity be used to its maximum advantage to democratize the process, even if in small degrees. So I appreciate your coming to further that process.

I wanted to ask you a little further about what you have been saying about the implications of Meech Lake and Meech 2, and the future of the Senate and the Parliament of Canada. I guess all of us as elected representatives are under a kind of dual pressure. We have pressures that are very local and localized and yet, at the same time, we have a jurisdiction and a mandate in that jurisdiction to address certain kinds of issues.

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Senators, no matter where they come from or how they are appointed, would be under the same kind of tension and conflict. Regardless of whether they were elected by a local constituency representing a region, appointed by a province, elected by a province or by a combination process of election and nomination and then appointment, they would have a provincial base. At the same time they would be functioning federally in a system which gives them certain issues they have to address and are constantly faced with.

Also, I bear in mind that the review of judges and the way judges have behaved indicates that judges are quite unpredictable once they are appointed, in terms of their obligations to who may have appointed them. They exhibit significant independence. I wonder, given all that, whether one needs to be quite as concerned as you are about senators really being so beholden to their point of original nomination that Parliament would be substantially unbalanced by that fact, quite apart from getting into the other stuff of whether we redefine effectiveness or representation and so on.

Mr Whyte: I think that is a good question. I want to acknowledge, as Joseph Campbell the mythologist says, that all life is a free fall into the future and that we do not know necessarily whether the structures we create will generate the outcomes which I predicted.

Let me back away a little bit and say I am not so sure that the political imperatives in Quebec are constantly going to be so opposed to the devolution of Quebec authority into the centre. I do not know that for sure, but experience says that is a thing to worry about very much. I do not know that senators are not going to grab hold of a national agenda and a national vision in performing their role. I guess I want to say that there seems to me powerful reasons why they will not. Perhaps, to go back to Joseph Campbell's metaphor, if that is the case, of course Meech Lake is a free fall into the future without a parachute. There are no constitutional amendments possible, barring unanimity.

But the reason why I think the senators will be a problem under the post-Meech Senate is simply that they will be appointed by provincial capitals for the purposes of making the provincial capitals' interests known. That is, it is very likely that the Senate will become what senates often become, houses of brokerage and horse-trading and log-rolling among the various regions of Canada, and that they will not be personned by persons who are large in spirit in relation to their own region and large in spirit in relation to the whole of Canada.

Now if we had an elected Senate it is very likely that the elections would be governed by parties, so the behaviour of senators in the Senate would reflect on the party nomination process and the party discipline process. So long as we have viable national parties, that would be a powerful discipline to steer people towards a national vision.

One might also say that just being in Ottawa, being cut off from one's provincial capital, getting one's information from the Ottawa Citizen or from the people you deal with every day will create a national vision as opposed to a regional vision. That is the good thing about national capitals. It is a good thing about colleges. It is always a virtue to be cut off from the world sometimes. You are less constrained to represent constituencies or other kinds of reality. You can get to a different kind of reality, which is valuable.

I do not deny that Ottawa, as we sometimes say, has something in its water, and that is probably good. It blinds you to the restraints of the other parts of the country, but I do think the nomination out of capitals will exert tremendous discipline, even when they are lifetime appointments, or to age 75. Senators will obtain their legitimacy for voting, for log-rolling, for dealing, for speaking in terms of whether they have remained honest to the constituency which created them.

That is always the role for a political elected person. Their legitimacy, their capacity to speak and to participate depend very much on the integrity with which they have honoured the process by which they got there. I think the pressure on senators to honour the process of provincial appointment will make them regionalists with a vengeance—well, regionalists. Let's not overdo it.

Mrs Cunningham: I have just a short question. Thank you for being here today. I just wondered if you would comment on the priority, as you see it here, with regard to constitutional discussions with regard to Senate reform as you read it in this amendment and the aboriginal question, constitutional issues, one where it states that there will be a meeting within a year

and the other where it states that there will be a commission but five years for discussion.

Mr Whyte: They sit in the document in different ways. Of course, the meeting within a year for aboriginal people is a year from resolution, and resolution is when?

Mr Jackson: Three years from now.

Mrs Cunningham: It could be any time depending on how many of the provinces ratify.

Mr Whyte: There is something called getting Meeched. I suppose we might wonder whether the aboriginal conferences will happen. We do know that the Senate discussions do not depend upon ratification; they just happen.

It sounds like I spend my whole morning reading the Globe and Mail—which is another form of bias, I guess—but again I want to point to Robert Sheppard's interesting paragraph in the middle of his column where he points out that aboriginal people rightly suspect that notwithstanding the fact that they are placed on the constitutional agenda, the constitutional agenda is perennially in this country hijackable and has been hijacked by two powerful claimants, the west and Quebec, over and over again. It is clear that happened two weeks ago and it is clear that it is not going to stop happening.

It does not mean we are doomed to this kind of treadmill. It just takes a very strong will to put aboriginal government back on the table. Again, I have been slamming the leaders of the government of Ontario—not slamming but raising questions about them. I suppose in fairness I should say that in the March 1987 conference it is true that Premier Peterson and Attorney General Scott clearly did seem to see that as a moment where something might be done and worked inventively and actively, and perhaps a little irresponsibly even, towards seeing if they could get that matter on the agenda dealt with in a timely way. I guess I want to agree with aboriginal scepticism.

Mr Grandmaître: I would like to direct your attention to the legal opinion given by the six eminent lawyers. This legal opinion was attached to the final agreement. I understand that you do not interpret the legal opinion the way politicians are interpreting the legal opinion. I would like to hear more about your legal opinion or your legal interpretation of the opinion given to the premiers.

Mr Whyte: The agreement calls them "distinguished"; I prefer that to "eminent." The Prime Minister kept on calling them eminent. "Distinguished" seems just a little less comparative. I feel a little less gored by it, but I should not let ego launch into this.

In any event, I think their opinion is accurate enough. I think it describes accurately enough how the "distinct society" clause will operate. My objection actually is with the six distinguished constitutionalists, quite frankly. I think they were aware of the political significance of their participation in this way. Since what they had to say was virtually nothing, that which has been said since Meech Lake was first proposed, I do wonder why they thought it was in some sense representative of a standard of lawyerly detachment to become involved in this.

So I will enter a mild rebuke to the six, but my main rebuke is to the politicians who were not ambiguous at the time it was presented about its meaning and its impact, both that it meant that the "distinct society" clause would not erode rights and that it would have influence on the court, and have since become ambiguous. Again, one of the strategies for dealing with processes which have faults is to say a number of different things, none of which live together. I think that has happened.

The Chair: On that note, Dean Whyte, we want to thank you again for appearing before the committee. We have appreciated your comments.

Mr Whyte: Thank you very much for the time. I am grateful.

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NATIVE COUNCIL OF CANADA

The Chair: Our next presenter will be Christopher McCormick, national spokesperson for the Native Council of Canada. Good morning. We have allowed a half-hour for your presentation. We hope you will make an opening statement and then allow some time for questions.

Mr McCormick: Good morning, everybody. Thank you for having us come before your committee. We last appeared before your committee on the Meech Lake accord in 1988. At that time, we listed the minimum demands of aboriginal people in clear and unmistakable terms. That list has not changed; no surprises have been sprung since then.

We stated three simple and reasonable conditions: (1) secure access of aboriginal peoples to constitutional reform; (2) clear and effective recognition of aboriginal peoples as an inherent and fundamental characteristic of Canada, with protection and promotion of our cultures, languages and institutions; and (3) the right of the northern territories to enter into and participate in Confederation on terms as fair and flexible as all other former colonies and territories were given.

What is missing from the package in front of you, and what is essential, is a clause in the Constitution that balances the recognition of the linguistic duality of Canada and the distinct society of Quebec with a clear interpretative provision recognizing the aboriginal peoples as an inherent and fundamental characteristic of this country. The Charest committee recommended this. Manitoba recommended it and is now, as you know, suffering the trauma of withdrawing from that stance. Ontario also formally adopted this view as one of its top priorities.

As an Ojibway I have known prejudice and racism in my time, but as a Canadian I have been brought up to believe that such attitudes are basically foreign to the people of Canada. Was my education in Ontario schools an exercise in deception? It is sad that in 1990 Canadians are being asked to endorse a new policy in which aboriginal peoples become immigrants and northerners are subjected to colonialism. There is no other way to describe an agreement that, in Premier McKenna's own words, consigns us to assimilation and which offers a veto over northern self-determination to each and every southern government.

I am responsible to my northern constituents in both the Yukon and Northwest Territories. They tell me to fight injustice when I see it. I see injustice on a vast scale. How can Ontario be an accomplice? For aboriginal peoples, an honourable re-entry of any part of Canada into the family of Canadians must not, cannot and will not be made on the backs of others. We therefore ask this committee to immediately move and adopt three specific amendments to the Constitution.

The first will recognize aboriginal peoples as an inherent and fundamental characteristic of Canada worthy of protection and promotion.

The second will return the decision on provincehood in the north to where it belongs, to Canada through Parliament and to northerners through their leaders.

The third will ensure, through a clause requiring our participation in any conference that affects us, that never again will Canada's first peoples be excluded and compromised in the way that took place on 9 June.

I am in great pain when it comes to dealing with people who question the importance of aboriginal concerns to the future of Canada. It hurts me when I encounter the attitude that somehow the old wars between English and French are more important that the future of the first peoples of this land. Quebec is crucial to Canada, but Quebeckers and Canadians must recognize that the future will not be built on threats to break Confederation or by taking each other hostage. Blackmail, whether it is economic or emotional, is a sickness. I thank the Great Spirit that Elijah Harper has been able to call a stop to this epidemic by calling the attention of all Canadians to what is really fundamental and valuable in our relationship with each other.

There are no partial victories or interim successes when it comes to defining ourselves. Meech Lake makes the mistake of trying to deal with a seamless web, but only one strand at a time. That is not how it works. A people, a nation, a country holds together only as long as all of its constituent parts are held in harmony. One part cannot be told, "Wait, next time it is your turn," not when today's rules all but preclude a realistic hope for the next time.

It is one thing to address a limited agenda in any round of constitutional reform, but Canada's identity is not a limited agenda; it is the agenda. We are on that agenda, starting with but not finishing with the aboriginal peoples. We do not oppose the passage of Meech Lake if, and only if, an effective and secure package of companion amendments is initiated and a commitment is made that they will also pass into law.

Without such an initiative, we will not mourn the death of Meech Lake. Its death would only offer us new opportunities: opportunities for all Canadians to reclaim control over their Constitution and their country. For us, it would also provide opportunities to educate Canadians about the desperate need of aboriginal peoples to be granted some reason to have faith in our common future together.

Aboriginal peoples insist that we be allowed to enter the circle of Confederation with honour and dignity. We cannot accept being hostages in the political wars between the English and the French or any other immigrant group any longer.

Members of this committee should not question their own role and capacity in this crisis, nor should you shrink from it. I would like you to act only in accordance with your own oath of allegiance to be faithful to Canada. Take the offer we have made. It is reasonable and moderate, it is the least we can accept and it is possibly the last time we will be able to make it.

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Mr Wildman: Thank you for your presentation. As I have said to other representatives of the aboriginal people, I agree with your assessment of Elijah Harper's role. In regard to page 2, where you list what you believe this committee should immediately move and adopt—first, the recognition of aboriginal peoples "as an inherent and fundamental characteristic of Canada worthy of protection and promotion"; second, the issue of provincehood in the north; and, third, the question of participation in any conference without the exclusion of aboriginal people—the commitment that was made in the agreement reached on 9 June for constitutional conferences on aboriginal rights commencing after ratification, does that meet your reasonable demands as a process for actually having those demands included in the Constitution?

Mr McCormick: It is is a major step to accommodation of the aboriginal people. What it says, and we have got it confirmed by Senator Murray, is that it would be a process strictly directed to aboriginal agenda items. The thing we are pointing out here is that there are going to be other conferences, such as conferences on the economy or fisheries. Or, let's say, the Canada clause that is within the amendment. Aboriginal people are feeling that if you were to have a Canada clause and if you were to be talking about the fundamental characteristics of Canada, of which the aboriginal people feel we are one, we feel we have a right to be at the table when there is a decision on the Canada clause.

The recent Sparrow case in British Columbia has pointed out to Canadians that the aboriginal people have an aboriginal right to fish. If you are going to talk about fisheries, then we feel that the aboriginal people have a right to be at the table. What we are pointing out is that you are going to have some agenda items that directly affect the aboriginal people. We should be able to speak for ourselves in those discussions. If it is an item that is not going to affect the aboriginal people, then we do not expect to be there.

Mr Wildman: In essence, what you are saying is that it should be the Native Council of Canada, the Assembly of First Nations and the Inuit Tapirisat of Canada which decide whether or not the issue relates to the interests of aboriginal people.

Mr McCormick: I think we definitely should have a say. I think if it can be shown by us—I think the Prime Minister would be quite able to make the assessment too—that it is going to affect us or our treaty rights or our aboriginal rights, then it should be a foregone conclusion that we should be there to speak for ourselves.

Mr Wildman: Finally, then, you described Senator Murray's assessment of the proposal for discussion. Is that enough, or is it your position, as I understand it is Elijah Harper's position, that there must be an extension of the deadline so that these issues related to the rights of aboriginal people and Indian self-government, for instance, can be dealt with prior to final ratification of Meech?

Mr McCormick: I believe the timing situation we are in is that we are being dictated to and I do not think Meech Lake can be passed with the amount of time that is left. The point I was making on the wording that is in the amendment is we thought it was ambiguous in that it seemed to infer that we might be only one of a number of agenda items in the meeting. What Senator Murray did is clarify for us that, "No, the agenda items are all going to be aboriginal agenda items." We are hoping to deal with what is in the 1983 accord that was signed by the Prime Minister and all the premiers. That is the agenda we would wish to address in the process forum.

Ms Oddie Munro: I think you have probably answered my concern. On page 3, when you are talking about the passage and the companion amendments, you are talking about the document that is before us now, the companion resolution. I gather your concern is that if you had more time, then you would be able to get some agreement that you be included or at

least your points be included within the companion resolution, or that the other agenda items which you are referring to could be moved up and not necessarily looked at in contingency with Senate reform or any other thing. I gather the aboriginal peoples are feeling that they are sort of added at the end of this continuing list and until other things are settled you are not going to be looked at. Are you saying, as I understand it, that there is a process? For Senate reform, for example, if the commission does not come to a conclusion, then certain things happen. I do not know if it is your understanding that this precludes any of the other agenda items from moving up. Maybe you have already said it to me, but I am just wondering where you feel your powers of negotiation are or whether there is any room for manoeuvre here, in the right sense, in the positive sense.

Mr McCormick: Just to clarify and make it clear, we started this process on companion amendments about three months after the Meech Lake accord was passed. I think all of the provinces have received our companion amendments. It ended up that this was the joint position taken with the national group at the Charest hearings. What we are looking for, and I think what it is going to take to save Meech Lake, are legally linked companion amendments that pass before or at the same time as Meech Lake.

In regard to the specifics of the Senate wording within the amendment to Meech Lake, where aboriginal people have concern in the wording on the Senate is that one of the positions of the Native Council of Canada is that we would like to see guaranteed representation in the Senate for aboriginal people, yet we do not have any method of participating in that commission that was set up to look at Senate reform. We would like to be there ourselves to speak on it. I have not heard anybody really echoing the sentiments of aboriginal people in the process that has just recently gone on.

Mrs Cunningham: Thank you for the clarification. So you are happy with the wording for the constitutional issue—"the first to be held within one year of proclamation"? That is not a great concern to you? "Representatives of aboriginal peoples and the territorial governments to be invited by the Prime Minister"—you feel you are assured representation for the aboriginal issues by what is written here?

Mr McCormick: We were assured by the senator that the process would be solely to deal with aboriginal issues. We have a minor complaint with the wording in that we feel it should have been worded in a manner that it was a meeting of the Prime Minister and premiers and representatives of the aboriginal people, and if anybody was to be invited, it would have been the Northwest Territories and the Yukon if the agenda item affected them. But as you see in the wording, we are there as invitees to talk about our rights. It is a minor thing, but we would have preferred a little bit—

Mrs Cunningham: I see. "To be invited" is your concern, those words.

Mr McCormick: Yes, it is not a big issue.

Mrs Cunningham: So a small change in that one would meet with your concerns?

Mr McCormick: Yes.

Mrs Cunningham: Then with regard to the Senate, to be specifically part of that in the same way you would be part of the aboriginal issue discussions, where you were not mentioned at all. Those are the two main concerns?

Mr McCormick: Yes, that is right. On the Senate there is the commission. We do not have any meaningful role on it. We have a position. We feel aboriginal people should have guaranteed representation in the Senate, and out of that process they are describing, I do not see where we would ever attain that. On the wording of the processes we are asked as invitees. We would have preferred to be—

Mrs Cunningham: Full participating members.

Mr McCormick: That is right.

Mrs Cunningham: We all share your concern on process, you can be sure, but yours is much greater right now. We are pleased that you came this morning. Thank you for the clarifications.

Mr Allen: If you were given those assurances that Mrs Cunningham asked you about by the Prime Minister and the premiers in the next couple of days, would you be in favour of, in effect, withdrawing the protest in Manitoba and moving ahead towards ratification?

Mr McCormick: Mrs Cunningham has brought up a couple. We are saying that we want to be recognized as an inherent and fundamental characteristic of Canada in the body of the Constitution, not in the preamble. We are also saying that the pre-1982 process for becoming part of Confederation as a province should be the one that the Yukon and the Northwest Territories are allowed to be able to come into Confederation by. If Meech Lake goes through, it is unanimity. I do not see why any province would want to hold a veto over the Yukon and the Northwest Territories becoming provinces. All my years in Canada every time we looked at Canada, there were the Yukon and the Northwest Territories on that map. I am standing beside those people. There is no need to change that formula as far as I can see. So those things would have to be addressed also.

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Mr Allen: Is that prior to this coming weekend?

Mr McCormick: That is the position that I have been given by my assembly, that either there are direct amendments to Meech Lake or there are legally linked companion amendments, or "Don't worry yourself about it, Chris," is what they are saying, "Let it go." I think the demands of the aboriginal people are reasonable demands, and I feel that they are supported by the majority of Canadians. I also feel they are supported by people in other countries.

Mr Allen: I think most Canadians are not particularly knowledgeable of the details of the outworking and the implications of any of those things, although they support the broad principles. I certainly think that is fair enough.

I guess what concerns me very much is that, after Saturday, I am not sure where we are at, and I am not at all convinced that we are not into a high state of limbo for a long period of time and that there is no easy and quick way back to the table. While you have in your concluding remarks said you do not accept being hostages in the political wars between English and French, the problem of course between 1984 and 1987 was that you were hostages in the wars between English-speaking provinces and English-speaking premiers without the factor of Quebec in the situation.

I must say I am a little surprised, having got the steps that have so far been gotten out of the last stages of the Meech process, and with the anticipation that Quebec will be back at

the table if Meech is passed, and given that the Premier and the Intergovernmental Affairs minister have both, in the past few days, stated unequivocally their solid support to aboriginal self-government in Canada, that you would not be prepared perhaps to take just enough of a gamble on where we are at right now.

I understand you do not owe Canada anything, and I am totally with you on the question of you are the first distinct society. I have no problem with that. But I wonder, given the nature of the process that we are in, why you would not take that element of gamble now that it looks like the tide is flowing, at least in significant measure, in the right direction and that Quebec's being at the table would make a significant difference. Help me with that.

Mr McCormick: I guess here is where the aboriginal people are making a stand, because we do not think we have been given the recognition that we deserve. I think the aboriginal people have given up vast areas of land that Canadian people make their living on and live their lives on. I have heard Premier Joe Ghiz say: "I give my unequivocal support to recognize Quebec as a distinct society. The French people have been here for 350 years." Well, we have been here for tens of thousands of years. Can you answer me what makes the French people more distinct in Canada than the aboriginal people?

Mr Allen: No, I do not have a good answer for you.

Mr McCormick: That is what I am saying.

Mr Allen: But what I have difficulty with is how we conclude the process whereby we get back to that point.

Mr McCormick: I guess I feel that the onus is on the shoulders of the Prime Minister to see if they can meet the legitimate demands of the aboriginal people.

Mr Jackson: I will be brief. Earlier I made a reference to the fact that if certain premiers of this country could hold up Meech for their concept of certainty, I felt that Canada's first nations people had every right to approach the issue of certainty with the same sort of devotion. But instead of just looking at the negotiations at the bargaining table, which you have responded to, both to Mr Allen and to Mrs Cunningham, are there not also legitimate concerns with respect to individual provinces and certain treatment and certain rights as they relate to the appeals to the Supreme Court, the provincial court, the whole issue of the advancement of James Bay II?

In fairness, Mr Rémillard is talking in the paper about what he might offer as a guarantee for Quebec and that maybe it is worth the gamble. But can you proceed with that in light of the fact that you have legitimate, paramount concerns for native Canadians with respect to certain property rights matters in northern Quebec as it relates to James Bay II, as an example; that it is not simply a concept of Senate reform in your place? It is more akin to fishing rights, land rights, your choice to stay within a Canadian framework as native peoples within the Constitution and your right not to secede perhaps in Quebec for native Canadians.

Mr McCormick: I am not sure I got your question, but if I do not answer it, clarify it for me and I will see if I can.

One of the things in the promises that Quebec is publicly saying is that it has not lived up to its obligations under the James Bay I agreement to the Cree people in northern Quebec. I think they have to clean up their act in that particular instancethere.

Mr Jackson: That is the point I am referring to. You are answering it. I am asking if in fact they can state in the context of the Meech Lake debate that they are prepared to recognize and honour self-determination, but their actions currently and their future actions, as they have indicated in their treatment of native Canadians, with James Bay II, for example, are out of sync with what Mr Rémillard is saying.

Mr McCormick: Yes.

Mr Jackson: That is what is of concern to me. We cannot just be focused on Senate reform and the issues that came before us today. There are other issues which show a contradiction almost in the manner in which native peoples are treated.

Mr McCormick: There definitely is a glaring contradiction. Also, in regard to the premiers being champions for the aboriginal peoples, as you know, in the last process there was an agreement in 1986, which was a number of months before the aboriginal conference in March 1987, and there was already agreement by the premiers and the Prime Minister at that time that there would be no changes to the Constitution until Quebec's five demands were reached. So we were knocked off the constitutional agenda by the concern of the other premiers for Quebec.

There is nothing here that can be identified to me that tells me that these fellows have had a change of mind. Even when we are dealing with the federal government, it has a fiduciary responsibility for the aboriginal peoples in a number of these land and hunting cases are going on in Canada; for example, a case in Nova Scotia. Aboriginal people went to court. The federal government is supposed to be our champion; it sided with the province. We went to court, we won the case and the federal government went home. Our affiliate association is stuck with a $200,000 legal bill. The federal government should have been there in the first place supporting us. Maybe the federal government, through its conscience, felt it should support the provincial government, but I feel that if we go to court and win, the federal government should also pick up the costs of that case because it should have been there on our side in the first place.

The demands of the aboriginal people are supported by the Canadian public in general. I think they are reasonable demands. That is the position I have been given by my assembly. I hope that it can be dealt with before we go too far ahead in the direction we are going, which I think is the wrong way. But I believe that if Canada is going to be a strong country—some people do not just go through the door and say: "We will bring you through after a while. Let me get through to the other side first." If we want to be a strong country, we have to walk side by side and we have to walk through things together. Even the concept of two founding nations—there are three founding nations in this country, and the aboriginal people are the first.

The Chair: Thank you very much for your presentation. We appreciate having you here this morning. I am sure the committee will take what you said to heart.

Mr McCormick: I wish you well in your deliberations, and thank you for having us.

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BEVERLEY BAINES

The Chair: Our final presenter this morning is Beverley Baines, Faculty of Law, Queen's University. Welcome, Ms Baines. We have allowed half an hour for your presentation, and we would like you to leave some time for questions. Please commence when you are ready.

Ms Baines: I have prepared a brief. Could I ask if you have copies of it in front of you? I am going to read from it.

The Chair: It is being circulated right now.

Ms Baines: I have accepted the invitation to appear before you with considerable reluctance since I believe that your predecessor, the select committee on the 1987 constitutional accord, did not heed the testimony that I and countless other Ontario women gave it in 1988.

It is true that the 1987 committee did refer to some of our arguments in the text of its report. However, there are 11 recommendations, which is what really counts, which failed to make any reference whatsoever to women, nor did these recommendations even refer to what is variously expressed as sex or gender equality. Moreover, this failure, and I cannot call it an oversight, occurred in the context of an accord that we had said was flawed precisely because it placed women's rights in jeopardy by omitting them. Indeed, the invisibility of women has been compounded by the fact that in 1987 and again now the Meech Lake negotiations have been conducted as the exclusive preserve of the 11 first ministers, all of whom were and remain representative solely of able-bodied, middle-aged, white men.

Under these circumstances, my message to you is simple: Put a halt to this perfidious tradition of rendering women invisible when it comes to negotiations that involve our constitutional rights. When you approve the 1990 companion agreement—and I am convinced that you will do so, irrespective of whether I think you should—please make women's concerns visible by recommending that the agreement be amended by adding four explicit references to women. Let me explain each of these references in turn.

My first recommendation pertains to the Senate, that entity of which you have been asking so many questions this morning. If there is to be a federal-provincial commission that is to conduct hearings and make proposals on the appropriate way of constituting the Senate, then it is absolutely essential that the question of improving the representation of women be put on the agenda of that commission. Today there are only 12 women senators in a House with 104 seats. Since 11 seats are vacant, this means that women hold only 13% of the Senate seats, even though we constitute at least 50% of the population of Canada. These figures are simply unacceptable. The conclusion is clear: there must be some form of affirmative action policy put in place in order to ensure that more women become senators.

Moreover, it seems that an affirmative action policy for women senators is required irrespective of whether the Senate is appointed or elected. When I contacted the Senate information office to get these statistics on Friday, I was not only told that there are 12 women senators; as well, I was told gratuitously that these 12 represented the highest proportion of women in any legislative body in Canada today. The information officer then spontaneously summed up, "and that's under the appointment system."

Accordingly, it is premature for me to take any position on whether the Senate should be appointed or elected. Instead, I subscribe to the words of the 1970 Royal Commission on the Status of Women in Canada, which also considered the question of the failure to appoint women to the Senate. That royal commission suggested that we seek "a mechanism by which women could have an equitable proportion of the Senate seats, whatever the future of this institution and the evolution of its structure." Perhaps they saw Meech coming.

It would be particularly fitting for Ontario to take the lead in recommending that an affirmative action policy for women senators be added to the 1990 Meech Lake agreement, given that the first woman to sit in the Senate, Cairine Wilson, was a Liberal from Ontario who was appointed 60 years ago this year.

My second recommendation pertains to the amendment that adds section 28 of the charter to section 16 of the accord. I wish I could feel gratitude, but it is difficult to feel gratitude for an as yet unfulfilled promise simply to return gender equality rights to where they were before. Many of us have expended much effort, energy and expense over the last three years, only to find ourselves standing still in so far as this amendment is concerned.

By now, moreover, you will have heard many arguments to the effect that it is not enough to add only section 28 to clause 16. If you think that women's charter-based equality rights are protected by the addition of section 28, then it is your responsibility to set out the explanation that sustains your argument.

In the earlier report from your predecessor committee, there were four scenarios about the possible relationship between the charter and the accord and women's rights. If you have somehow now determined that only one of those scenarios will prevail, I urge you to write that in your report. It is not up to women to do this work for you. And do not stop there. You must also extract a commitment from government litigators, from your cabinet colleagues, to honour your explanation and argument. Recently women have all too often found that the very lawyers who should be supporting their claims, the government litigators, are nevertheless ranged against them when charter rights litigation becomes a reality.

The third section of the 1990 agreement that should contain an explicit reference to women is the so-called Canada clause provision. In that provision we are told that there will be an all-party special committee of the House of Commons to consider the five drafts of the Canada clause that apparently already exist. Although I endeavoured to get copies of these drafts, none have been forthcoming. Perhaps you are functioning in too tight a time frame. Nevertheless, I have read what I suspect are the relevant recommendations from the 1987 Ontario committee and from the Manitoba task force report. In both cases there is, of course, an almost singular absence of any reference to women.

In the Ontario context this absence is made all the more problematic by the further suggestion, and I take this suggestion again from your predecessor's report, that given a Canada clause—it was not called a Canada clause then; it was a reference to recognitions at that time. The suggestion was "a nonderogation clause such as clause 16 might become superfluous."

The problem is not that we might just be on the doorstep of getting women's rights protected in clause 16, only to see clause 16 whisked out from under us should we wish to retain it; rather the problem is that while the wording of clause 16 may offer the potential to protect the aboriginal and multicultural peoples and, if amended, women from the reach of the

linguistic duality and "distinct society" clauses—note I say "may offer" this—no similar ordering of the relationships among these various collectivities has been proposed in any of the drafts, Ontario included, of the Canada clause that have surfaced, at least publicly, to date.

Under these circumstances, I think it is of very great importance that you make two recommendations with respect to the Canada clause. First, women should be explicitly referred to, just as are aboriginal and multicultural peoples, and they are referred to both in the Ontario recommendation and the Manitoba recommendation, and as are the French- and English-speaking peoples, who are referred to in the Manitoba proposal.

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It is not sufficient just to refer to charter charter rights in general, which the Ontario recommendation does. Women are invisible when you simply refer to charter rights in general, or at any rate they are no less invisible than are aboriginal and multicultural peoples. To the contrary, women must be specifically included if there is to be a Canada clause. We are a fundamental characteristic of Canada as well. Second, if clause 16 is to disappear, as your predecessor appeared to believe, then the ordering of the various relationships must be made as explicit in the new Canada clause as it presently is in clause 16, presumably as amended.

My fourth and final recommendation pertains to the various first ministers' conferences that are proposed in the 1987 and 1990 agreements. I think it is past due time for women to be at these conferences in their own right. So I ask you to recommend that no further first ministers' conferences be held unless and until some way can be found to ensure that at least 50% of the participants, and I include the first ministers, are women—women who are francophone, aboriginal, black, multicultural, distinctively abled, of various ages, anglophone.

Ms Oddie Munro: Thank you very much for your presentation. We had a similar presentation in Toronto last week from the National Action Committee on the Status of Women, I believe.

My problem on the committee that is looking at Senate reform, and then again on your suggestions here, is how do you come up with—you have already mentioned it—a fair and equal formula for looking at not just access now—you have moved beyond access to positions—but equal representation and not suffer from a sort of reverse discrimination? How do you account to francophone, aboriginal, black, multicultural, without causing other kinds of ferment within those organizations?

I know you have touched on it, but we were also grappling with the same thing. If, for example, in an election you ended up with 23% women, either on the Senate or any other body that you are talking about, how do you then walk in and say to people that an appointed person is as important? It may be that the argument can be made as an elected person. That is my problem and I know it is yours, but to have it stated here again poses some problems for me. I wondered if you had come out with any formula recommendations in your deliberations internally.

Ms Baines: I would like to be as helpful as possible. I am not precisely sure of the context in which you are asking the question. First, let me say that you used the phrase "reverse discrimination." I find that a troubling phrase to be used and one that should only be made in the context of white men and it should be immediately responded to with the fact that we presently have and have had ever since the Senate began an affirmative action policy for white men. So if you want to talk about reverse discrimination, that is where it begins.

Ms Oddie Munro: What if you end up with white middle-aged women? What do you do?

Ms Baines: If you have an electoral system or an appointed system?

Ms Oddie Munro: Yes.

Ms Baines: What it seems to me you want to do is what the royal commission recommended—look for mechanisms, if you have an electoral system, that ensure you do not end up with a monopoly of white middle-aged women. I am not interested in that particular process. There is an interesting article, I think in the Dalhousie Review. I know it is by Christine Boyle. It is very interesting. It has a series of recommendations on how to structure electoral systems in order to ensure that you are able to elect women. She goes through processes involving proportional representation. She goes through processes involving designated constituencies, double member constituencies and so on. It seems to me it should be possible for the great minds we have now thinking through these systems to try to come up with a system that is as fair and equitable as possible. I would make no claims for white women in this process, but for women generally, yes, I make the claim.

Mr Allen: I appreciate the highly specific recommendations Professor Baines has made. I must say, as someone involved in the drafting and writing of the original report, that I feel she is quite right, that there should have been explicit reference rather than general reference made to fundamental rights, in such a way as to make it quite clear that women were being referred to at the point in the report where the specific recommendation was made around inclusion in the fundmental characteristics of Canada, and that this should certainly be remedied.

I guess one of our concerns was, as always when you get into these piecemeal amendments to the Constitution, about heaping language on language on language. I would like a bit of clarification around this and your help. On page 5 where you ask for some specific "ordering of the relationships among these various collectivities." As one looked at the charter and the problem of Meech Lake not being seen to undermine, abrogate, etc, rights affirmed in the charter, I guess our sense was that there was already in the charter a kind of ordering, and that for us therefore to reaffirm the rights of Canadians as they existed and doing that in the body of Meech Lake then would refer to the ordering in the charter.

The charter, as you know, has the equality section where the specific non-discriminatory features are mentioned and then there are the interpretative clauses that relate to aboriginal and multicultural groups in our Constitution and then there is the reference to gender equality. The only one of those that has an override provision is the gender equality one where it says "notwithstanding anything in this charter," which I would presume means notwithstanding anything in the "notwithstanding" clause and notwithstanding anything in what is reasonable in a free and democratic society. Gender equality appeared in that sense to be at the top of the hierarchy. That is what we thought we were saying and doing.

Can you respond to that if that is not the case and not the way we should understand the ordering that is in the charter,

when we tried to reaffirm in our document and in our amendments in the select committee's report from Ontario two years ago?

Ms Baines: I would like to make two comments on what you have said. First of all, I wish that you would render in writing your understanding of the relationship between the accord and the charter and the interpretation clauses, because that is precisely my second point. That explanation of that argument, if that is the view of this committee, should be put forward as unanimously and wholeheartedly as you can. As your 1987 report noted, that is only one of four scenarios with respect to the relationship between the accord and the charter.

Mr Allen: Yes.

Ms Baines: Because it is only one out of four, it is certainly why all women's groups are saying the inclusion of section 28 is such a big risk to women. We do not know what interpretation the Supreme Court will place on the relationship between the accord, if it is passed, and the charter, let alone what interpretation will be placed on section 28 of the charter since we have no Supreme Court interpretation of that section.

That said, let me then say that the problem with the proposal—was it recommendation 9? I cannot remember—for what is now becoming called the Canada clause, and in the Ontario committee's report the recognition clause, is that you made reference to the aboriginal peoples and to the multicultural peoples and to the charter. Again, we have a reiteration of the by-play that occurred in clause 16, specific reference to two of the groups that are covered in the charter and then a reference to the charter. If it were to interpret a legislative provision drawn according to your recommendation, how is a court to interpret the explicit references to the aboriginal peoples and the multicultural peoples? That is the point at which I say there should also be an explicit reference to women. It is the same reasoning I used in the context of clause 16, and it is particularly poignant if clause 16 disappears, as you indeed tended to recommend happen.

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That said, let me make one further point: Clause 16 includes a reference to section 35 of the Constitution Act, 1982. That is a provision relating to the aboriginal peoples that is just outside the charter, follows the charter. The aboriginal peoples in section 35 have clearly approved and subscribed to subsection 4, the wording of which, if not identical to section 28 of the charter, is all but identical to section 28 of the charter. So I would like it to be very clear that we are not taking about hierarchies here. The aboriginal people have been very understanding. In fact I think their history is such that they have been very accommodating historically of the equality of women among their peoples.

Mr Allen: That is very helpful.

Mr Jackson: Professor Baines, I must confess that both Mr Wildman and I are, I believe, the only two members of this committee who voted against Meech Lake. I confess with some pride that I voted against it in the Legislature primarily for the reasons you have raised, not in response to my constituency as much as to my children, all of whom are young ladies.

However, having said that, I am intrigued by two of the references you have made. One is with respect to a mechanism by which affirmative action might become real in the constitutional sense. I would just share with you that I believe very strongly what I have learned from the Green Party in Europe, for example. It actually does work, and it does without offending the so-called rights of individuals, but it is affirmative action in terms of elected women participants in that party and—

Mr Allen: And the New Democrats in Ontario.

Mr Jackson: Enough of your commercials. There are several political parties that are analysing it, but it is fair to say that it is real in Europe at the moment and I think it is a model worthy of consideration.

I would like you to pursue your fourth and final point. Like many Canadians, I visually saw the back-slapping orgy on the Saturday night at which women were noticeably absent, but I got the impression that at least one of the individuals who was a member of the table team with her Premier was a woman. I wonder to what extent we can fine-tune the process of those who go behind closed doors. Earlier we heard a presentation that the future implies a repeat performance, that we have not broken the process of going behind closed doors, and that therefore it becomes essential. How do we ensure that sufficient women go behind closed doors if in fact that is a process we cannot disrupt?

I was hoping you would put a finer tune, other than challenging the committee in a very general way. Even though I might agree with you, I am looking at, for example, that Ontario set a standard that at least a woman cabinet minister must attend, not necessarily the Attorney General of the day who happens to be a male so that the two men go behind closed doors. Have you given further thought to how we might, in Ontario's sense, not change the process because I do not think we are going to be able to as a committee, but within the body of our report make some recommendation at least for Ontario's performance in that situation. Your words on record would be helpful.

Ms Baines: I think your words on record have been helpful in this particular suggestion. Let me suggest that if I cannot have a revolution and you explicitly excluded that from your question, if I am limited to small steps, then, for example, your suggestion that a woman cabinet minister accompany the male Premier would be a small step in the right direction.

I believe it was New Brunswick that did have a woman cabinet minister at the table. I think in 1987 Newfoundland had a woman cabinet minister at the table. But I am also given to understand from the various reports I have read that there were occasions when 11 men met alone without any other representatives with them, and I think that is unconscionable. It ought not ever to happen again. I have complete sympathy with the aboriginal people who are in effect saying the same thing. Given that two very marginalized groups in so far as the political process is concerned are saying this to you, the kinds of suggestions you are making are at least a small step in the right direction. Far be it for me to say anything other than, "Keep going."

Mr Epp: Ms Baines, I appreciate your being here and your presentation today. Going back to page 6, I am just wondering how you are going to work that out and get a formula that you have recommended here. You think 50% of the participants at a first ministers' conference should be "women who are francophone, aboriginal, black, multicultural, distinctively abled, of various ages and anglophone."

How are you going to put that together? Are you going to have them appointed by these various groups or should we not do anything until half of the first ministers of the country are in that category? How are we going to get there? If we do, for

instance, say that they should be multicultural, do you believe for a moment that all the multicultural groups in Canada can agree who that correct person should be to represent them at the first ministers' conference?

Ms Baines: To pick up on your last point, I cannot presume to know whether they could all agree, or indeed, from my suggestion, I do not believe for a moment that all of the women who fall in the categories I have listed would agree. I hear your question that is very similar to the question that was posed earlier with respect to the composition of the Senate. I hear these questions, though, as barriers to the issue of whether women should be there at all. Perhaps you do not intend them as such.

Mr Epp: Not at all. I would love to see women there, but the various provinces just happen to have elected men to be first ministers. I would very much like to see some women there and there are a number of women who may be there in the future, like Sheila Copps and others, but I cannot tell the public out there who they should elect.

Ms Baines: No, but you can say to the first ministers and the first ministers can say to themselves that the present system of all-male decision-making must stop. If we do not stop it now, if we do not make it happen, it will not stop. So you simply have to say, "No more meetings until there are women at the table." I do not have a magic formula other than that it cannot continue this way. There is no representation of women there.

The Chair: Thank you very much, Professor Baines for your presentation this morning. We appreciate your taking the time to come and be before us.

Ms Baines: Thank you for listening.

The Chair: Members of the committee, there will be cabs at the front door at 12:30. You are to go to the Avitat terminal, not the main airport terminal.

The committee recessed at 1207.

AFTERNOON SITTING

The committee resumed at 1604 in the council chamber of the regional municipality of Sudbury.

The Chair: I would like to call the committee to order, please. Welcome to the select committee on constitutional and intergovernmental affairs. We apologize for the delay in getting started. We were in Ottawa this morning and we had problems getting out of Ottawa. I apologize for being late.

I am also advised that there are some people here who would like to make oral presentations to the committee who are not on the agenda. There appears to have been some confusion or some difficulty in getting the message out that the committee was going to be here today.

We are trying to be as fair as we can. If there are people who would like to address the committee, you will indicate that to the clerk. If we are able to make some arrangement whereby we can give two, three or four minutes, we will do so, provided there is time. We have a plane to catch this evening at 7 o'clock. If everybody wants to speak, obviously it is not going to be possible. If there are some, we will try to accommodate you. Debbie will be outside in the lobby. If anybody wishes to speak to her, please do so now.

ELIZABETH KARI

The Chair: We will begin with our first presenter scheduled, who is Elizabeth Kari. Could you come forward, please and sit at the table where there is a microphone already lit up. We have allowed 20 minutes for your presentation. We would like you to give a statement, and then leave some time for questions if possible.

Ms Kari: The notice was very short and I did not have time to make this brief. I will try to purge it as I am reading it.

Members of the select committee on constitutional and intergovernmental affairs of the Ontario Legislature, welcome to Sudbury. I am very pleased to see some women. My name is Elizabeth Kari. I will trace for you briefly the way I think I came to be here.

The week before last I tried to get a letter delivered quickly to Premier David Peterson while he was at the first ministers' conference in Ottawa. I enlisted the help of Sterling Campbell. I did get the letter sent off, and a copy of that letter is attached to my brief. It was signed by myself and two other women lawyers named Patricia Meehan and Carolyn Dawe.

The letter says:

"This is to inform you that we oppose the Meech Lake accord in its existing form and we object to the current process being carried on by the first ministers. The Meech Lake accord must be subject to the Charter of Rights and Freedoms in every province, including Quebec. Negotiations in private on constitutional issues offend principles of democracy."

Then last week Mr Campbell called me, in part about my letter, and he mentioned the hearing, and Mr Gleason called me and asked me if I would like to speak. I have not had time since Thursday to research or collect documentation. I am relying on reports from the media, newspapers, television, radio.

I am a woman lawyer and parent. Any expertise I have is in family law, not constitutional law, and what I say reflects my experiences. I am here today in a private capacity. I received delegated authority to speak for a few others as well as myself. In fairness, we have not had time to go over this paper and so I have agreement in principle from some Sudbury lawyers, but that is in their private capacities, not representing their firms. Those lawyers are Carolyn Dawe, Frances Howe, Ron Swiddle and Patricia Meehan. There would have been more had I had more time.

I have explained how I come to be here. I do not understand why you are here, but I am glad you are. A hearing that comes after a decision is an interesting concept. Certainly in my line of work hearings usually precede decisions.

I heard of another interesting approach to hearings for those to be held in Manitoba. To deal with all the speakers, several committees would divide the workload, each hearing some. That is a novel approach. It reminds me of having one judge hear a defendant's story and another judge hear the plaintiff's version. That approach speeds the process, gives many people an opportunity to speak, but to what end? I do hope that you people are attending all the hearings and are not splitting the chore.

As I indicated, I do not understand the purpose or timing of this hearing. I have wondered whether there is any need for this hearing from the point of view of the Legislature. The reality is that the Ontario Legislature has long since passed the Meech Lake accord. Is it with a majority government considering rescinding its approval, or is the point of this hearing to discuss and learn about the companion to the Meech Lake accord?

If it is the latter, there is no urgency. The government in Quebec has stated it has no intention of passing the companion until the fall. Mr Peterson was quoted in the Globe and Mail last week as saying he would like to pass it quickly as an example to other provinces. But there is no need for speed. There is no deadline, there is no need to restrict these hearings to short sessions, no need to limit them to four locations. I spoke with a lawyer from Kitchener shortly before I came and she was upset that there was no hearing in Kitchener. It may not be wrong or silly to hope that the Legislature will listen even now to our concerns.

The letter I sent off to Ottawa obviously had no effect. Possibly it was not delivered. My message to you today is the same as what I said in the letter but somewhat longer, although I will try to shorten it.

Before the Ottawa conference we were told it was necessary as part of the quest for the accord, a fundamental quest to restore Quebec to full membership in the Canadian family. The way to get Quebec in was by way of the "distinct society" clause. That clause was designed to protect and expand Quebec's political authority and make it better able to protect francophonism in that province. That aim is not out of keeping with fundamental justice. Nations may require special political power to preserve central elements of their identities. There are good reasons for the "distinct society" clause, and many who believe and accept those reasons at the same time and as firmly believe that protection and expansion of rights of cultural identity do not come at the expense of fundamental human rights.

Ever since the Meech Lake accord was signed, its flaws and omissions have been acknowledged. We have been told it was politically expedient. During the past three years we have been told that Meech Lake is a done deal, that it could not be changed; to change it would be to lose it. That notion is nonsense. Any deal, any arrangement can be improved. Particularly

when the flaws are so serious and so far-reaching, they must be improved.

Prime Minister Mulroney at the close of the first ministers' meeting used the words "a fair and honourable agreement." But saying does not make it so. Words do not clothe the emperor. The agreement is not fair, not honourable, and the way it came about is obscene. The future and reputation of Canada are too important to be treated so shamefully.

This spring before the conference we were told that the point of the first ministers' meeting was to acknowledge and accommodate the many concerns and objections about and to Meech Lake. We were told the conference had to be delayed until it was clear there would be fruitful discussions. After the conference the Prime Minister admitted he deliberately delayed it.

The goal was to bring in Quebec. Was that accomplished? At the moment it depends at least on the House of Assembly in Newfoundland and Elijah Harper, who likes the rules in the Manitoba Legislative Assembly, and of course possibly on you today. If that goal were achieved, it was done ignobly by discarding the values of democracy.

Ends and means: Many of us believe that the end does not justify the means. The means used, both initially in respect of the Meech Lake and again last week in Ottawa, were not proper, and the end was not proper.

I am going to focus only on two aspects, the interrelationship of the "distinct society" clause and the charter and the procedure that was used, which I have subdivided into three categories: what was done last week in Ottawa, how was it done and what were the effects.

The first question will take a little time. There is some dispute whether anything at all was done. Was Meech Lake affected? On 14 June it was reported in the Globe that Premier Bourassa told the National Assembly in Quebec that the accord survived intact and the political statement that was signed had no effect. The consensus appears to be that Meech Lake is as intact as it ever was. The appended political statement is a series of agreements, add-ons and promises. What was settled on were promises, not changes to the accord.

The highest gloss put on the agreement was by Prime Minister Mulroney, who said the way will be clear to proceed with other constitutional reforms so much wanted by so many people. The other power people, the other signatories, described it as the best deal we could get in the circumstances. I say, looking at the circumstances, in the circumstances it is not the best. It is not even good enough.

I think if we use a domestic situation, we can better assess that standard of the best they could do. Think of the phrase "You did the best you could, honey." Here is how it can come about. You have unexpected company. They are here suddenly, hungry. The hydro has been out for a while. You have one egg, no vanilla, not enough chocolate and you have to be really creative, make substitutions, cinnamon for vanilla, use cocoa powder, haul out the camp stove. That is when you get told, "You did the best you could, honey." That is a fine standard for providing an unexpected dessert, but it is not appropriate for matters that affect our country.

What was done in Ottawa was the application of force, like a pressure bandage, to New Brunswick, Manitoba and Newfoundland to pass the original accord. How was it done? The ministers avoided dealing with the "distinct society" clause. They avoided our concerns.

There are those in Quebec who say the "distinct society" clause will not have any impact on the charter. If that is so and if there is no negative impact intended, then it is a simple amendment to have Meech Lake state that it is subject to the charter.

The existing silence in the Meech Lake accord about the potential impact is not acceptable. There is a lot of law about ways to interpret silence in a statute. These cases produce confusion and uncertainty. Statutory silence does not indicate to a court whether one alternative is preferable to another.

The scope of that "notwithstanding" clause must be limited because of the dangers of silence and because the charter is a special legislation with that special first "notwithstanding" section.

The concern that rights of cultural identity must not be purchased at the expense of fundamental human rights comes right across Canada and the first ministers recognized that concern. The way they dealt with it was by way of that letter attached. It was an opinion about the interrelationship of the charter and the "distinct society" clause.

That letter was included at the end. It was mentioned in the agreement, but the agreement did not endorse the letter and did not disclose the political concerns that it was meant to address. In any event, it was addressed to the Prime Minister, not to the other ministers who did not endorse it.

The purpose of that letter is articulated quite well by the dean of law of Queen's, John D. Whyte, in an article published in the Globe and Mail on 15 June 1990. I commend that to you. He indicates that the letter is not evidence of the minister's intent and it will not be considered as any evidence of legislative intent. It was generated under the pressure of secret meetings.

We know that our courts are not influenced by the opinions of lawyers. I know that. Everywhere I go, the court always wants to hear the other side.

In passing, it is worth noting that one of those six constitutional experts in drafting that particular letter was one who had been involved in drafting the original charter, the one that did not have the section 15 equality clause that protects women and minorities. Would we be unfair to measure his bona fides against what did not concern him in 1982?

When we examine that letter, we note its irony. Under the existing charter, our individual rights and freedoms are subject to the "notwithstanding" clause, the one which gives a province authority to suspend these guaranteed rights under those reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The letter states that the "distinct society" clause does not infringe individual rights under the charter at the first stage. The second stage is the important one, the one that balances collective rights and individual rights, the one that determines the extent to which an individual right should be limited for the collective good.

Those lawyers conceded that courts will consider a claim for individual rights against Quebec's explicit role to preserve and promote the distinct society. That explicit role will necessarily give expanded shape, force and meaning to the existing "reasonable limits" in the charter. The court, in such a case, will necessarily have to put the force of the legislative mandate to put first and to protect first the cultural distinctiveness, above all, beyond all.

1620

Those limitations and restrictions will come in ways that we cannot now predict. We need time and thought to consider the effects and we need the circumstances to develop. But we do know that those restrictions that are sanctioned by the "distinct society" clause will limit individual rights and freedoms.

In the short time available, I have come up with one illustration. The right of immigrant women in Quebec to have lessons in English, as a language second to their native language, will be unlawful. For whatever valid reason that they as a minority would wish to learn English, perhaps to escape an abusive home environment, to move to the home of a relative in western Canada, that desire will be prevented by the collective goal of the "distinct society" clause. Immigrant women are traditionally less mobile and less able to pick up skills. Opportunities are more readily available to men through employment.

I had another illustration but I am going to move on.

Laws that would have been struck down under the charter because they infringe on individual human rights will be valid when Quebec is acting to preserve its distinct society. Under that clause, Quebec with its extra power will uphold laws that would be struck down as unconstitutional in other provinces.

It is natural, right and reasonable for people to be proud of their country. People want to be proud of their constitution, the system of laws, to be proud of their country's history. The constitution is the essence of a country. The way a constitution comes about is an essential part of the constitution. In this case, we cannot be proud, either at home nor abroad. We are in a glass house and we have now lost the moral and political right to throw rocks at what other countries do.

The recent deal was done by 11 people, 11 men. What authority did they have? Nothing came to them under the rule of law or by principles of natural justice or with the approval of majorities. Eleven men in secret, closeted away, wheeling, dealing, trading off. I was not asked if I agreed to give away six Senate seats. None of us were. I need time to consider.

If Meech Lake had had enough intrinsic value, it is possible we could then say that any cost of saving it was all right. To effect the deal, we might even say: "Sure, come into my kitchen, whether or not I am home. Take whatever you want. Give it away, use it. The cause is worth it." But that is not how we do things.

Ends and means: Many of believe the means tarnish the ends. There is unanimity that the process was wrong. Even Prime Minister Mulroney, who set up the process and deliberately delayed the ministers' meeting after delaying the cross-country hearings for three years, acknowledged that. He said, "The crystal-clear lesson is that a way must be found to ensure public involvement in their constitutional amendment process." That was no new lesson. He did not need a crystal ball, and his late acknowledgement that the process was wrong did not make it right. To get the right result, the just result, things have to be done in the right way.

The Prime Minister defended his chosen process with reference to the history of the 1865 Charlottetown conference 125 years ago, long ago. There was no such system in place then. It was before the BNA Act, before the Bill of Rights, before the charter, before TV, before the 1929 Persons case, which said that women were persons and that the Canadian Constitution was a living tree.

I want to look a little more at the process, and for that I was going to quote from the speech made by Premier Clyde Wells, and I commend that to you. I will quote only a few lines from it.

"It is unfortunate that we had to discuss these major, major matters (without the) ability to assess them on...what was right for Canada on the basis of principles....Instead we had to think of it in terms of having to do it on the basis of the fear that we would cause irreparable harm to Canada.

"It is impossible for the 11 first ministers to do justice to the matters they have to consider and it is grossly unfair to the 26 million people of this nation to have their ministers closeted and making decisions in a secret way without letting them know what is at stake and the basis on which the decisions were made."

It is very clear that there were extraordinary coercive powers during that meeting: manipulation, domination, scare tactics. If even only one of those people present in Ottawa were put into the position that he must do something he believed intellectually wrong under fear, under threats, that process damns the results.

I am going to use a few domestic examples here. We often in law, and of course even in medicine, talk about consent for certain medical treatment. We insist that parties must give consent that is fully informed in domestic contracts. They must have a considered response. We show our concern about unequal bargaining, about informed consent.

Domestic contracts do not deal with major issues of national significance. They deal with far smaller matters: how to divide the forks and the good linen, whether the visit will be during the weekend or just during the day, and the amount of support. But the people involved in these agreements are protected and safeguarded as much as possible.

There is a standard clause that we put into domestic contracts. The usual one says that each of the spouses acknowledges that the terms of the agreement are fair and reasonable. Each of the spouses signs the agreement voluntarily and not under duress, without any undue influence or threats or coercion by the other.

Then the lawyer signs a certificate of independent legal advice, which affirms that it has been signed and the person acknowledged that he or she understood the nature and the effect and was not subject to any fear, threats or compulsion and it was signed freely and voluntarily.

When a court does find that a domestic agreement has been signed or made in circumstances indicating undue influence, duress, stress or threats, that agreement is set aside, and properly so. There is a further honoured principle that informs our criminal law, that any confessions made by an accused are admissible in evidence only if they are made without fear of threats or promises of favour.

Should we have a lower standard for our Constitution? Should we accept less? When our Constitution is the backbone and basis for all our other laws and all our other legal traditions and principles, my answer is in the negative.

The normal standards for agreements on constitutional issues are tremendously important about how our government works. I am skipping that part, except I want to say that those become a model for people in other areas of life. There is a spinoff. I am going to give a more human perspective on this, a small-scale illustration about the use of duress or force to control the result. It is a hypothetical but too typical domestic situation, and I am sure you will recognize the parallels.

A woman comes to my office, separated. She is not employed. She speaks about her need for support from her spouse for herself and the children. She and her husband have been talking between themselves about whether he should pay

support, trying to settle. We discuss family law rights and I do not convince her.

Her husband has his own agenda. He does not want to go to court or follow general rules about support. He plans to move out, get his own apartment, some new furniture and see the children from time to time. He wants her to agree to what he wants. She does not want to push him. He would be angry. She has not much faith in the system and likely less in me because he has a quick temper. He usually gets his own way and he is a smooth talker.

Besides, her husband has told her he will help her out. He will give her whatever he can afford to after he is settled in. He promised. A vague promise of financial help in the future. I think I know what that promise is worth, but she believes. She has to, because he has also told her that if she does not agree quickly or if she wants too much, he will just quit his job. Then she will be fixed; she will not get anything at all.

She gives in because he had one strong final argument. He has told her that if she does not agree, he will fight everything. He will take the children from her and then her world will be over. She cannot afford to make him mad. She is scared. She believes the risks are so high that she will jeopardize financial security for the children, because something is better than nothing.

1630

The Chair: Ms Kari, we have already gone past the time limit. Could you sum up?

Ms Kari: All right, I am going to sum up very quickly. That woman has been coerced and that dynamic in that family is not a good role model for the children, who did not learn anything about negotiation or compromise.

A week ago Saturday night, we saw the men gloat about their done deal in Ottawa and chuckle about whether Premier Getty might be physically intimidating. What have our children across Canada learned from that exercise? I ask you to reflect on that question.

I would have talked about the argument we are given that this had to be done in private. I say no. It is harder to do it in public, true; it is harder to work in a matrimony with both parties and both lawyers, but we can. It is possible.

Next, I was going to quote you a passage from Clayton Ruby's article in the Globe on 15 June. Under the force of time, I will restrict that and quote only part:

"But Quebec asked the rest of Canada for permission to discriminate against its minorities, and we gave it. Not all the mutual backslapping or congratulations can conceal the fact that the men in blue suits did not think it important to maintain the principle that all Canadians ought to have equal protection against discrimination and oppression by government. The real loser under Meech Lake is the idea of equal human rights for minorities all across this country."

Do we wish a country of which one part has the legislated authority to limit the rights of its citizens? I spoke earlier of ends and means. This is the end, the result, the effect of Meech Lake. It is the weakening of fundamental human rights. The means do not justify the end; the means denigrated the end. The end was intolerable.

What I ask you to do is rescind Meech. Go back. Use your rules committee. Find the appropriate procedure. Work with other governments and then put it to the country and let everyone become involved. Then we will all have strength, a good Constitution, one we can be proud of.

The Chair: Thank you very much, Ms Kari. Thank you very much for taking the time on short notice.

ONTARIO NATIVE WOMEN'S ASSOCIATION

The Chair: Our next presenter is the Ontario Native Women's Association. Would Michelle Solomon come forward, please. Thank you for coming before the committee. We have allotted half an hour for your presentation. We hope you will allow some time for questions. Please commence when you are ready.

Ms Pierre: My name is Marlene Pierre. I am spokesperson for the Ontario Native Women's Association today. Our president, Susan Hare, is taking an educational leave of absence in order to take a pre-law course in Saskatoon. However, I am accompanied here today. I personally am from Thunder Bay. I am the executive director. In the audience is our first vice-president, a young woman, a mother—I do not think she is in the room right now, but her name is Michelle Solomon—and Dorothy Wynne is our treasurer; she is from Kapuskasing. Alice Soulière is from here, locally. There are a number of other supporters and visitors here today.

On behalf of the aboriginal and Metis women in the province of Ontario, we would like to extend greetings to the members of this panel. I have already taken the opportunity to introduce our members who are here as well, and I would also like this committee to acknowledge the presence of the aboriginal people present here today.

The Ontario Native Women's Association, whose head office is located in Thunder Bay, has been in existence since 1971, when it became evident that aboriginal and Metis women and their families were not going to be able to improve their home life unless we became politically involved and active and spoke directly to what we believe to be our rights and benefits as members of the original race of this land.

It is a matter of history, the role that was played by women, and although this history has been blurred by the white chroniclers of history, we ourselves have never lost sight of our role. We are the caretakers, the selectors of leadership, the teachers of children and the preparers of warriors. We are also protectors of Mother Earth. We chose to protect the rights of aboriginal women and their families no matter where they live in Ontario, or whether they choose to live in other parts of Canada for that matter, because we felt our rights were not being protected by any organization, including the governments of Canada.

The purpose of our presence here today is simple. We have come here out of a necessity for you to hear from the aboriginal women in this province. I am sure none of you ever have. We have come out of a sense of frustration and perhaps futility, since the lawmakers of this province have once again seen fit to ignore and to castrate the delicate relationship between the federal government and the people.

Our anger is vented from the notion that you believe you have the right to make agreements and negotiate and give our rights away as aboriginal nations. It is not your place to do any such thing. It is our sole right and our responsibility, as sovereign nations and as distinct peoples of this land, to do that. We have our own form of government, we have our ways of decision-making and we choose, as men, women and children, to seek our own involvement and how our lives should be settled.

Your interference, and that is exactly what it is, has jeopardized the trust relationship which we have with the federal government. You have no right to do that. Your interference, as you have witnessed over the past few weeks with the situation in Manitoba, has met with disaster, not only for the aboriginal people but for your own governments and for your own political lives and yes, for the rest of the Canadian public.

You must learn, as legislators, that you cannot exclude any people, especially the aboriginal people. You cannot give laws that are given to us as aboriginal people by the great law, and that is one of the reasons for your very demise. I will say that, in the province of Ontario, when the next election comes, you yourselves will be told by way of who is elected and who is not elected by the people in Ontario.

As women, we have a very grave concern for our aboriginal future. I will go into a little bit of the history. Of course, everyone knows we have had to live under the Indian Act since it was put together by some strange legislators far away from our lives and our homes. You have developed a certain section of the Indian Act—it was called section 12(1)(b)—which was a discriminatory section of that act. It said that when native women married men who were not status, they lost their rights and benefits.

We had a young woman from this riding—her name was Jeanette Corbière Laval, from Lake Wikwemikong reserve—who now has a place in history for bringing our cause to the Canadian court system. Her court case, of course, lost in the Supreme Court of Canada, and it was then left with a person by the name of Sandra Lovelace, from the province of New Brunswick, who brought it to the human rights court of the world under the United Nations. There, she levied enough pressure for Canada to take that law out of the Indian Act which discriminated against us. We could not rely on Canada to right that situation. We had to go elsewhere, out of our own country, to get protection.

I think it is important for you to understand the political, social and economic situation of aboriginal women in Ontario as well as Canada. Our women are single-parent, family-led. About 52% of our families are single-parent families. We are at the lowest of the economic scale. Our average income, in the study that was done five years ago, is $8,000 a year, which is well below the poverty line. We have had the release of a report in January of this year that gave our experience to the Ontario public. It told the extent of violence that exists in aboriginal families, and we state very clearly that that violence is a result of the inability of governments to deal with the type of lifestyles that we wish to have under our own Indian government, and that has been denied us. Our children still today are being taken away by children's aid. I can give you a lot of examples of that. Our children are still taken away to go to a foreign education system.

1640

Nothing has improved over the last 100 years of domination by your governments. Even the Honourable Ian Scott's framework for Indian self-government in Ontario, the paper he released in December, to us, we have read it and we look at it and all it is is a land grab. They want control over the few resources that we already have as aboriginal nations. This is where Ontario is coming from, and you men and women who are sitting around this table today have a right to say and carry our message to the Parliament of Ontario.

The women in Ontario who live on the reserves have no matrimonial property and custody laws that protect them or allow them the opportunity to even take it to court. The federal government has jurisdiction for any matters relating to matrimonial property and custody on reserves, and that does not help our women. We want to negotiate a proper law that protects all the family members and indeed is a process that is dealt with at the community level, with all of the input and concern and propriety of the community.

The other thing that we have lost very much in the last 100 years is our own traditional form of government. People think that we do not have a government. We have always had a government, but it has been replaced and influenced now by a philosophy and set of principles dictated by greed and tyranny in our communities. We want to get away from that. We want to set up our own government and we want Ontario to deal with us in a proper and consultative way that gives us all a chance to walk with dignity in our communities and along with the Canadian public.

The women have stood alone in the past. We have had to organize ourselves over the last 15 or 20 years, but it is well known that we have provided the greatest challenge and the greatest resistance to all those changes over the past 100 years, or else we would not be sitting here today. Although we have been here just as long as our male counterparts, we have suffered the most. We have been beaten the most. Yet for some reason, we can still come here today and face you and ask to be a part of the plan of the future.

With respect to Meech, we are no way in a hurry to see Meech pass. We support the aboriginal leadership in Manitoba and have sent similar support. We have sent similar support to Clyde Wells and we have sent letters, communiqués, to each one of his constituency members in the province of Newfoundland. I do not know of anyone else who has done that and I think that is an example of our commitment to Canada, that we want to be recognized as equal as anyone else. As a matter of fact, we believe, as the quote goes, we are a fundamental characteristic of Canada and deserve to be placed in the Constitution as such.

We have heard so much about the argument that Quebec will separate. I do not think so. If their principle of government is based on greed and tyranny, as it seems to be, exemplified in the newspapers and elsewhere and in their James Bay 1 and 2 agreements, where they cannot even uphold modern-day treaty agreements, we believe they will not separate, because they want a part of the Canadian tax dollar that we are presently giving them now. Not only that, what will add to the confusion is that they must realize that Indian reserves are federal lands and they have no right to jurisdiction over federal lands.

I want to make it very clear that neither I nor, I believe, anyone in this room will take the blame if Meech Lake fails—not if, but when Meech Lake fails. We will not accept any blame for that. The blame is yours, Mr Peterson's and all of those other premiers of the provinces who came at the 11th hour and tried to force a deal, as the lady before me so eloquently put it.

We believe that we have to come here and tell you that we want our rights protected first and foremost and that has to be put into the Constitution. Our position is the same as the national leadership's in that we want permanent and full recognition as a distinct aboriginal society with the right to self-government. We want to be full and permanent participants in the processes that are set up that deal with any constitutional matters, such as the first ministers' conferences, and we want that also in the province of Ontario. We want provision that the territories will become provinces and that there will be no hand-

icap or harassment to those people to become a legitimate province like all of us have now. We want to be guaranteed participants with voting power on issues of national interest, such as fisheries and energy. Your people have shown all across the country—right from Newfoundland, where the haddock and the cod are near extinction, in the prairie provinces we are seeing farmers going under, we see the orchards in BC which are going under, and we see the forests being denigrated, we see our rivers being turned around—you people have not taken care of this land as you were supposed to.

The last thing, but the most important to us as an organization, is the protection of our aboriginal and Metis women's rights through the equality and mobility clause, which we felt we had started to protect in the Constitution and the amendments of 1985, before the Meech Lake accord came around.

New governments and new leadership will come to pass; I can guarantee you that. As well, within our own ranks our leadership will be renewed and vital leadership will come from within our own governments, and we, as aboriginal women, promise this: We will tell this story to our children and grandchildren, to not trust, to fight to the end and to build our communities and to learn the traditions and to protect the women and the children and be proud at all times, no matter how much we hurt inside.

We have witnessed a great demonstration of Indian determination and strength in Elijah Harper. We honour him today and pray for his continued courage and to fight for us and all Canadians. We will join him and his people on 21 June, the declared national Indian Solidarity Day, to be held in Winnipeg next week. We ask that all Ontarians support us and support the position of equality and distinctiveness for all Canadians for all generations.

1650

Mr Wildman: We very much appreciate your coming from Thunder Bay because, as you know, unfortunately we have not been given very much time to hold hearings and it is impossible for us to travel as widely as perhaps we should.

I share your support and admiration for the struggle of Elijah Harper and the Indian Council of First Nations of Manitoba, and I certainly understand your position, put so forcefully, regarding the treatment of aboriginal women, as compared even with the males in the aboriginal community, as opposed to the rest of our society.

My understanding of Elijah Harper's position is that he does not reject the recognition of Quebec as a distinct society, but he does reject the exclusion of the aboriginal people and the failure to recognize them as the first distinct society of this country and to see their rights protected and recognized within the Constitution, the rights that you enumerated: the rights to recognition as a distinct society, to self-government, to being at the table when issues of national importance are raised that affect in any way, directly or indirectly, native people, and the right of the northern territories to become provinces.

Do you understand that to be former chief Harper's position? If you do, do you think it would be necessary for us to consider the extension of the deadline beyond the end of this week so that the—

[Interruption]

The Chair: Please, ladies and gentlemen, the member would like to ask a question. We would like to have an answer. We would like you to respect the fact that we need some calm and quiet. Thank you for your consideration and patience.

Mr Wildman: Thank you, Mr Chair. I realize this is an emotional issue. What I was asking was, since the struggle of Elijah Harper, in my view at least, and I think in the view of most people, obviously is supportable and since it does make it probably impossible for the Meech Lake accord to be ratified by the deadline, would you support the proposal of an extension of the deadline of 23 June so that the rights of aboriginal people can be dealt with properly and in a dignified way and negotiated between the aboriginal peoples—that is, the first nations and the Native Council of Canada and the Inuit Tapirisat of Canada and so on—and the first ministers of this country?

Ms Pierre: We are in agreement with the strategy that is being adopted at this point, and that is to kill Meech Lake.

Mr Wildman: This morning we heard presentations from John Amagoalik from the Inuit Tapirisat of Canada and also from Chris McCormick of the Native Council of Canada, last week we heard from Chief Gordon Peters of the Chiefs of Ontario and now this afternoon we have heard from you. This morning both Mr McCormick and Mr Amagoalik indicated that, because of the time frame we face, in their view it was necessary to kill Meech Lake, but they were not necessarily determined to kill Meech Lake if there was more time for proper negotiations.

Ms Pierre: Then they had better start talking to their own constituents as well. The same as you should have done, they have to do with us before, and I think it will be the women who will tell them that you have to kill Meech Lake. We have all the time. We have been very patient. We have a lot more time.

Mr Wildman: I can tell you that like most members, I am sure, I have consulted with my constituents and I understand their concerns. That is why I support Elijah Harper and his stance. But I reiterate that I also understand that Elijah Harper's position is not necessarily anti-Quebec but pro-aboriginal.

Ms Pierre: Yes, and also, if I can clarify as well, the Ontario Native Women's Association's stand is that we will not support any document, any piece of legislation—and I am not saying that the Meech Lake accord is the people's paper either, because I believe that Mr Bourassa should ask his people whether they want to separate as well. So I am not—

[Interruption]

The Chair: Please, ladies and gentlemen.

Mr Jackson: I think the unique distinction which you bring to these hearings is not that you are the fourth native leader we have spoken to but that you are the first women. In that context, there has been sufficient evidence that, without women being protected in the current framework, native women in particular run the risk of—I will put it to you this way: If it is inappropriate and somehow offensive that 12 men got behind closed doors and made this decision, adding one more man who just happens to be aboriginal does not necessarily resolve the main reasons why I voted against Meech Lake, because it denies certain rights for women in this country.

Ms Pierre: Exactly, yes.

Mr Jackson: I think we should pick up the substance of the early part of your presentation, which gives us an insight

into the difficulties of being a woman and an aboriginal in Ontario, or any province, for that matter, in this country.

I just wanted to highlight that distinction. You may want to revisit that, but I have serious reservations about the process where 12 men go behind closed doors, for one night three years ago or for a whole week, under any type of circumstances that we are now getting pieces of.

I think the process should come out. There should be mandatory representation for aboriginals but also women within their aboriginal leadership.

Ms Pierre: Yes, absolutely. Aboriginal women do face double jeopardy; there are no two ways about that. I am not a constitutional expert, but I have a lot of technical arguments as to how the present Meech Lake accord affects us as women. I do not want to go into that, but I will table it with you.

I am pleased that you did vote against the Meech Lake accord. I would like to thank you for that and for all of our consideration. I think there have to be more parliamentarians stand up and do that, come out front and say it.

At one point we were very pleased that Clyde Wells was standing up as he had. We thought he was exemplifying what the true Canadian spirit was; out in the open, be honest. We are watching now and we are kind of going to sit back now about Mr Wells, because he may not have a free vote, and if he does not, then he will be like every other politician we have ever met. But we have a good feeling that he will bring that free vote.

1700

Ms Oddie Munro: I think that each one of us on the committee could have decided not to be on the committee. I just wanted to assure you that we are listening and in fact all parties have been asking similar questions when it comes to the rights of aboriginal peoples and other issues that come up. Although I know that it is very emotional, since it gets right down to your very values and your very contribution to Canada, I just wanted you to know that we are listening and that is why we are here. There is no ideal time for an ideal process to start. We are here because we want to listen to you. I would just like to thank you for saying again what I am sure you have said many times over.

Ms Pierre: I would also like to thank you for all the help that you gave Ontario Native Women's Association while you were minister. I am pleased that you are on this committee because I know that you will bring forth, behind the closed doors or whatever, what the feelings of the Ontario Native Women's Association are. So, yes, thank you very much for that support that you have always given us.

The Chair: Ms Pierre, thank you very much for your presentation this afternoon. We have enjoyed hearing from you, and I am sure that you have struck a chord with all of us here. When we deliberate on our report we will be considering what you said today.

UNION OF ONTARIO INDIANS

The Chair: Our next presenter is the Union of Ontario Indians. Bob Watts and Peter Akiwenzie, would you come forward, please. Gentlemen, we have allowed a half-hour for your presentation. We hope you will allow some time for questions. Whenever you are ready.

Mr Watts: First of all, I would like to commend the Ontario Native Women's Association on its splendid presentation. It hit on a number of points that are of vital interest to aboriginal people everywhere in Canada. Also, I would like to thank the members in the audience for showing their enthusiasm for what we are calling participatory democracy. We are wondering how the first ministers of Canada can deny a voice to the people of Canada such as this and sit around and privately determine our future.

We support the gutsy determination that has been demonstrated by Elijah Harper and the Canadian public, who have shown their concern for this country and this country's Constitution.

In 1980, prior to the Constitution Act of 1982, the subsequent first minsters' conferences and the proposed 1987 amendment, our chiefs and elders in assembly stated: "We are a distinct people. We have a distinct territory and our own lands. We have our own laws, languages and forms of government. We survive as nations today."

As nations, we have never surrendered our aboriginal rights, including the jurisdiction over our ancestral lands, nor have we surrendered the ability to pass laws with which to govern our people. As nations, we made the decision to negotiate military alliances with the British crown that resulted in successful retention against the United States of lands now known as Ontario. Later, the Anishinabek, acting in our capacity as self-governing nations, signed 44 treaties with the crown which delineated specific obligations to our people. In making these treaties with our forefathers, the crown formalized its recognition of our sovereignty.

Canada has a tradition, inherited from Great Britain, of acknowledging the sovereignty of aboriginal people. From the early days of British settlement and colonial rule, the imperial government dealt with the aboriginal people with whom it came into contact as if sovereign, according to Deputy Superintendent General Duncan Campbell Scott of the Department of Indian Affairs. Mr Scott was an important commentator on the history of Indian administration, which he helped shape during the early decades of the past century. The principle was clear, and the treaty was the specific instrument for the relationship between sovereign powers.

After Confederation, the Canadian government also adopted this imperial principle and practice. Under subsection 91(24) of the Constitution Act of 1867, the federal government was assigned exclusive authority by the imperial Parliament to fulfil crown obligations to Indian people. The new Dominion maintained the continuity of this crown-Indian policy, as demonstrated by the negotiation of the numbered treaties in the early decades of this century.

Our distinct status as sovereign powers, rather than subjects of the crown, was reflected in our absence from the conferences that resulted in the Constitution Act of 1867. Our position was as self-determining nations outside the political structures of the new federation. We did not seek, nor were we extended, representation within the evolving governments of Canada or of Ontario. Indian people were not considered citizens of the new Dominion.

In more recent times we appeared before the Ontario select committee on constitutional reform 28 months ago to this day to express our concerns and recommendations regarding the Meech Lake accord. We made five specific recommendations dealing with necessary changes to the Meech Lake accord, which are appended to my report. We suggested a process to deal with aboriginal issues. We posed questions for the Ontario Legislature to consider before Meech Lake became law. I must report to you today that our recommendations, our suggestions

and our very existence within the Constitution of Canada have been ignored.

We condemn in no uncertain terms the Meech Lake accord and the process of constitutional reform that has been conducted by the Prime Minister of Canada. In condemning the accord, we do not turn our backs to the people of Quebec. We recognize the oppression and sacrifices which successive generations of Quebeckers have suffered for the development of Quebec and of Canada. The Meech Lake accord makes Quebec a more than equal partner with the rest of the provinces of Canada. The lack of aboriginal content and participation creates a constitutional vacuum which undermines the integrity of the Constitution and which is unacceptable to aboriginal people.

The Meech Lake accord perpetuates the myth of the two founding nations and two languages. It perpetuates the myth of the fundamental characteristic of Canada. It perpetuates the myth of both discovery and of nation-building. The myth then becomes part of the supreme law of Canada.

The Constitution of Canada and the people of Canada deserve better than this. The truth is apparent to all. Aboriginal societies and languages are distinct and are part of the fundamental characteristic of Canada. Indeed, they are distinct not only in Canada but in all the world. The Constitution of Canada should celebrate this fact and recognize that aboriginal governments, languages and culture are not the stuff of museums and history books. They are vibrant, alive and thriving, despite all efforts to exterminate, assimilate and negotiate us out of existence.

This is our home and native land. Do not pretend that the glory of this country is due solely to immigration. The great tragedy is that we suffered, sacrificed and shared to help make this country what it is and yet we, the original inhabitants, are the most destitute in Canada. Where is the leadership and statesmanship, which we have heard so much about in the last week, that is needed to correct this injustice?

The Meech Lake accord's "distinct society" clause was designed to allow Quebec to better protect and preserve francophones in Quebec. We believe this clause is, in effect, a "notwithstanding" clause on the entire Constitution. We are concerned that the distinguished constitutional authorities did not take into account subsection 91(24) of the Constitution. While the "notwithstanding" clause did not apply to section 35, the "distinct society" clause may very well apply. The effect of Quebec law on other legislatures must also be considered.

We find no solace in the post-Meech amendment. The proposed constitutional amendment once again perpetuates the myth of Canadian duality and fails to dedicate first ministers' conferences to aboriginal issues.

There have been very few times in the history of Canada when the opportunity for aboriginal people to become full partners in the process of constitutional reform has been presented. Aboriginal representatives must have full representation at all first ministers' conferences. Ontario must seize the opportunity and become the lead player in convincing other provinces of this necessary development.

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In terms of Senate reform, we believe that aboriginal people must be included on the commission which studies Senate reform. The objective of Senate reform must be changed from that of reinforcing the French-English duality of Canada and must take into account aboriginal people as a distinct characteristic of Canada.

We recommend to this committee that the following process be adopted in Ontario: (1) that the province of Ontario immediately establish discussions with aboriginal representatives to recommend an agenda and timetable for first ministers' conferences to deal exclusively with aboriginal issues; (2) that the constitutional recognition of Indian government, languages and culture be the constitutional priority; (3) that a process be developed to familiarize the residents of Ontario with aboriginal constitutional issues, and (4) that public consultation in Ontario be mandatory before any constitutional discussions are entered into with the first ministers of Canada.

We offer you the experience of living under legislation that is discriminatory both implicitly and explicitly as ample reason for our rejection of the Meech Lake accord and its companion resolution.

Executive democracy has led us to this constitutional precipice. Threat, misinformation and manipulation have led us down this us or them path. Unity has been discarded by the lust for power.

Gary Doer stated, "Constitutions only reflect values, and the values of this country have really gone downhill." We believe that statements such as this sell the people of Canada short. Since the 1860s, the people have been left out of the constitutional process. The Constitution has come to reflect the values of a select few.

In conclusion, we recognize that this process is merely a public relations exercise. We believe, however, that the importance of constitutional reforms predicates the conscientious commitment of all participants in the amendment process. We have a duty to speak against this accord, which is inherently a misrepresentation of history.

Truth and justice are within our collective grasp. The obligation to deal honestly with our past and to build honourable foundations for our future belongs to all of us.

Mr Wildman: Your last comments with regard to this exercise are certainly well taken. We have, as you know, a ridiculously short time frame to deal with very complex issues. While there may be arguments as to why that has happened, there is certainly no legal obligation for Ontario to deal with this in such a short time frame.

At any rate, I would like to deal specifically with your proposals, on the second last page of your presentation, with regard to what you think we should be saying to the Legislature. First, there should be a "timetable for first ministers' conferences to deal exclusively with aboriginal issues." Am I correct in understanding that one of your main objections to the Meech Lake-plus agreement that was arrived at on 9 June by the first ministers in Ottawa is that while they said there will be conferences that deal with aboriginal issues, there is no commitment that those conferences will deal exclusively with aboriginal issues and that in fact the aboriginal people are seen as invitees to the conferences rather than integral participants in the process?

Mr Watts: Our recommendation is that aboriginal people be represented at all first ministers' conferences and that it is not up to someone else to decide whether or not something being discussed by the first ministers will impact on aboriginal people in this country. It is up to aboriginal people to make that distinction.

Mr Wildman: Okay. That is what I thought.

Would you support a proposal that in view of the exclusion of aboriginal people from the constitutional process, despite the

commitments made after 1987 and, for that matter, back in the early 1980s, this committee should recommend to the Ontario Legislature that the deadline for ratification be extended so that aboriginal issues can be properly negotiated in a dignified manner among the aboriginal peoples and the first ministers of this country?

Mr Watts: Are you suggesting that the deadline for the Meech Lake accord be extended?

Mr Wildman: Yes.

Mr Watts: We do not accept that. Let me clarify that, please. Especially in light of the fact that it appears that it is Meech Lake first or nothing, Meech Lake is a lie. It talks about an English-French duality as a fundamental characteristic of this country. That is a lie.

Mr Wildman: I understand your position and I understand the reasons for it. If then, as appears likely, the deadline will pass without certainly Manitoba and perhaps Newfoundland ratifying, then your view would be that the process should begin again with aboriginal people as partners in the negotiations that lead to constitutional reform and recognition of aboriginal people first as a distinct society and then the recognition of aboriginal and treaty rights and self-government.

Mr Watts: Yes, we do. We feel that those types of issues, especially the aboriginal issues, must come first and foremost in the constitutional reform process. If we start talking about process, as in Senate reform, and leave the human dimension behind, then we are falling back, we are losing some 120 years of progress, which is unacceptable.

Ms Oddie Munro: In addition to saying that the agenda to be put forward in consultation with the province should take a look at the exclusive aspect of aboriginal rights as an agenda item, I am hearing that you also have an interest and responsibility in any other issue that comes up as part of the development of Canada as we see it. Is that true?

Mr Watts: That is correct. We have entered into agreements with the British crown and the government of Canada as nation to nation, as sovereign powers. Anything that the government of Canada chooses to discuss with the first ministers will impact on our lives as distinct people and as nations, and we feel we have to be involved in all those discussions.

Ms Oddie Munro: If the process were to be in the way that you have outlined in the five recommendations, if that process were to take place and you would be part of the first ministers' conferences, you would have no difficulty then if the process were dynamic, back and forth, with taking recommendations back to grass roots and then back up to first ministers. You would then have no difficulty with the whole concept of first ministers' conferences.

Mr Watts: We believe in participatory democracy and that the Constitution should be a reflection of the people, and it is not. So it has to include the people, not just 11 or 12 select few plus their experts in a closed room trying to decide what the future of the country is going to be.

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Mrs Cunningham: It has been an interesting day. I was not one who wanted even to be part of these hearings, but we have had opportunities to get some good information from very important people, so for me personally it has been worth while. I am just wondering if you have taken a good look at this final communiqué dated 9 June 1990. Have you had a good look at that?

Mr Watts: I am not sure of your definition of good, but I have read over it several times.

Mrs Cunningham: All right. Yours is probably the same as mine then. I asked the same questions this morning of some of your colleagues whom we heard this morning, and I am just wondering if you would share their views for the purpose of making recommendations that fall in with your own here. In your second recommendation with regard to process—I am sorry, I am looking at the time frame one. Is that the second one?

Mr Watts: I am sorry. Are you reading ours?

Mrs Cunningham: I am reading yours now, yes.

Mr Watts: Are you reading the appendix or the presentation?

Mrs Cunningham: I am reading your second-last page with regard to the process. I thought there was a time frame that you wanted us to work on and I am misreading it. The very first recommendation then: "That the province of Ontario immediately establish discussions with aboriginal representatives to recommend an agenda and timetable for first ministers' conferences to deal exclusively with aboriginal issues." I am speaking on that one.

There are two time frames within this particular document. One has to do with the Senate, and I am trying to make certain that I am correct on this. You do not agree with who they want to participate in the sense that it is too exclusive and you want to be part of the commission, to have direct representation on the commission. Understood?

Mr Watts: Yes.

Mrs Cunningham: Okay, I understand that part. Do you agree that the time frame is reasonable? Perhaps we can speed things up by making recommendations, if we can get answers now. They are talking about that commission, the time frame before the end of 1990. Just from your first observation, do you think that is a reasonable time frame if you have the representation?

Mr Watts: I am not too sure if it is a reasonable time frame or not. What we are recommending is that issues dealing with the human dimension have to be addressed first in constitutional reform before we talk about Senate reform. Senate reform is dealing with process. Let's talk about issues that concern people first.

Mrs Cunningham: Okay. You are not against the idea of the commission, but you are saying, "Deal with the other one first." Is that correct?

Mr Watts: Yes.

Mrs Cunningham: Okay, then let's get on to the other one, which is the aboriginal constitutional issues. I perhaps should have asked this question first. The time frame that they are talking about that there is some agreement for now, and we are just trying to see if you would agree to this, is within a year, and strengthen the words "to be invited." Your colleagues this morning said, "Never mind, strengthen those words 'to be invited,'" but they thought the time frame "within a year" was reasonable. I am just wondering if you agree with that too.

Again, we are trying to make recommendations back to the Legislative Assembly in Ontario.

Mr Watts: I think that we would feel that it was a reasonable time frame when you talk about the information that needs to be generated for a first ministers' conference, but what we are saying, and what we have said clearly in our presentation, is that the Meech Lake accord has to go. The companion resolution will not pass anyway; we are confident of that.

Mrs Cunningham: I am trying to speak separate from it and only to your resolutions with some agreement that is already obviously there and build on it. That is what I am trying to do, so I understand what you are saying.

Mr Watts: Our problem is that what we are talking about is a second-best constitutional amendment and that is not good enough. What we are talking about is reinforcing in the Constitution through the Meech Lake accord a lie, and that is not good enough. Let's deal with the truth, and the truth is aboriginal people are a distinct society.

Mrs Cunningham: Can I dwell on recommendation 4 just for a moment?

Mr Watts: Please.

Mrs Cunningham: I am really pushing you here. I like to get things done, obviously. I have my own personal opinions of public consultation in Ontario. People who know me know that I was disappointed that we did not move forward after the public hearings two years ago and show the kind of leadership that I think we should be capable of and are responsible for in the province. So you share my opinion to a point. There are very many disappointed people at Queen's Park around process alone, there is no doubt. They can speak for themselves. I am telling you from my point of view.

I would like you to expand on number 4 just briefly right now. What do you think the Legislative Assembly should have done after the committee hearings? What kind of process would you like to have seen so that we do not make the same mistakes in the future? You talk about public consultation in Ontario, and the government can say, "Yes, that is what we did," but you must have some recommendations as to what we could have done with the public consultation and the recommendations that were made in our documents. I am just wondering what they could be.

Mr Watts: I think in some respects that this type of public consultation, although it is with a committee that is making hearings on something that the government has already decided on, is a pretty poor practice. When you have people come out who have shown their enthusiasm for constitutional reform and for becoming involved, then it tells members of the Legislature of this province that they have to get out in the small towns and small cities and reserves to hear from the people, to formulate recommendations that perhaps they can live with at the deputy minister level.

You take those recommendations back to the people to see what has happened with their ideas, how that has evolved, how it is shaped, what it looks like now when they have the recommendations from thousands of other people in that process. Probably before it becomes a cabinet document, that second consultation is needed. After that, recognizing that there is a legislative process, the cabinet has to look at this document and decide what it can live with and what it cannot live with. Those things, again, we feel, have to come back to the people. What can the cabinet live with? Tell the people what the cabinet can live with and get their responses on that.

Mrs Cunningham: The recommendations of the original committee did not preclude any decision-making. But they did sit around for a couple of years; there should have been active consultation and revisiting to the public around what those final recommendations of the committee were. That is how you see it.

Mr Watts: That is true. Too often the government has a specific agenda. It says it does consultation, but it has already determined what its position is going to be on a number of matters, and the public consultation is again a public relations exercise. "Yes, we came out and we listened to you. Your ideas were good." But they already have their document prepared.

Mrs Cunningham: Many of us share your frustration.

Mr Allen: I am delighted you have come and I just want to reiterate the fact that this committee is not the government. This is not the cabinet before you. We are a number of representatives of three different parties, and the rest of it you can conclude for yourself.

I—and, I think, the committee that sat on these questions originally and the present committee have no substantial difficulty with your major recommendations. You may recall that the committee originally did pass at least one of your major companion resolutions and did accept your proposal that the recognition of aboriginal peoples be included as a fundamental characteristic in the body of the Constitution.

We were trying to signal to you at that point in time that this was the direction our committee, as a Constitution committee, wanted to see Ontario go. We also recommended some process things which we hoped would happen. The government did not act to bring the Constitution committee back into existence as a standing committee so that we could get on with that.

Be that as it may, there is a dilemma. With regard to number 2, I have no problem, and certainly my party has no problem, with the issue of making the recognition of Indian self-government, language and culture a constitutional priority. The dilemma comes in that the present Constitution requires that there be a series of governments sitting down around the table in order to make a proper and formal decision at the end of the day. Regardless of what kind of public processes happen, something has to bring it to a head and there have to be appropriate governments there to do it.

I guess the dilemma is how to get a government back to the table, namely, the government of Quebec. I wonder if you have any recommendations as to how we do that, because for you to have this decision wrestled with and properly worked out will require at least, whoever else is there, that they be there as well, since obviously they control a very large territory and large numbers of native peoples are part of that domain and live within it. Do you have anything to help us with in that regard?

1730

Mr Watts: I think first of all, as has been pointed out to me by my friend, that Quebec may very well control a large area, but there is a large area within Quebec that it has no control over whatsoever.

I do not know how you bring Quebec back to the constitutional table. I do not know how Quebec was able to manipulate everybody else to accept the accord that they have accepted. The Premier of this province and the stature of this province

have led it to be able to do a lot of backroom type of negotiating and have led it to be able to become a leader in a number of areas. I would suggest that the same determination, if it were used for aboriginal issues, could go a long way.

Also, there is the relationship between our Premier and the Prime Minister of Canada. If the type of determination and the time were put into aboriginal issues that were put into the Meech Lake accord, where people were told, "You're not leaving this room until we decide on something," instead of, "Well, that's it. We can't do anything else. Let's go home"—if that type of determination were there, we would not be here today.

Miss Roberts: I am very pleased to hear your presentation today and I take very seriously your four recommendations. I would like to deal with number 3, that a process be developed to familiarize the residents of Ontario with aboriginal constitutional issues. I want to take you back to the beginning of your presentation, where you indicated that in 1867 you did not want to be part of the information and the consultation for the British North America Act, and in fact what we are looking at now is you, as a group, indicating you want rights put into the Constitution now.

My focus, which I would like to see happen as quickly as possible, if not immediately, is to bring you what you are asking for as a sovereign nation. And that is what you are asking. You do not want to be on a par with the provinces. You are looking at talking as a sovereign nation with Canada. Is that not correct?

Mr Watts: That is correct.

Miss Roberts: Okay, so we have to be very sure we know what you are asking for. You feel that as a sovereign nation, you and Canada, the federal government, should automatically be at the first ministers' conferences. You are not there as a province. You are there as one of the founding nations. And to take away from the duality that you have indicated, it should be you and the federal government and the provinces that should be involved in that. Is that not correct?

Mr Watts: That is correct. Just for the sake of clarification, we are not asking that someone say that is okay. We are stating that is our position. That is the way it has always been.

Miss Roberts: That is what I know, but I want to make sure that everybody here is aware of that as well, and that is where I go back to number 3. We have to get to a process to make sure the people of Ontario and the people of Canada understand what your position is as clearly as possible.

I think the sooner we do that, the better.

Help us with that process. What can we as a committee do, either on Wednesday or Thursday, and recommend to get a process out there which will indicate to the people of Ontario that you are a sovereign nation to begin with and that we must look upon you as that and bring you to the constitutional table as quickly as possible?

Mr Watts: I think that there are a number of educational methods, whether we are talking about in-school education, that history books should accurately reflect the history of Canada, or whether we are talking about negotiating a hydroelectric project and the non-native people and the local community say: "Well, what's that reserve doing there? Why are they involved in this?"

We feel the government has a responsibility to provide the funding, to provide the materials, to educate people as to why the government of Ontario or the federal government and Indian first nations are being involved in those types of issues.

The same thing happened with fishing. Up in the Treaty 3 area, when we started talking about treaty rights to fish, there was misinformation, there was intolerance, there was racial discrimination because there was no education done with the people in the area about treaty right to fish.

We feel that no matter what we are talking about in terms of negotiation, it is important that it is on a level playing field and that people, even if they are on the periphery of it, need to be told why such and such is happening.

Miss Roberts: Just very briefly, you are prepared then to participate with the government in an education process?

Mr Watts: We have tried to incorporate that into every proposal we have been working on in the last few years. Usually, the communication and public relations aspects of our proposal take second place to everything else.

Miss Roberts: Because you have a very important agenda just to make sure that you are there at the table with everyone else.

Mr Watts: That is true.

Miss Roberts: That is very important.

The Chair: Gentlemen, thank you very much for your presentation. We appreciate your being here.

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FRED MENS

The Chair: Our next presenter will be Fred Mens. Mr Mens, could you come forward, please. Mr Mens, we have allowed 20 minutes for your presentation. If you could leave some time for questions, it would be appreciated. Please proceed when you are ready.

Mr Mens: Thank you very much for coming to Sudbury. Thank you, Sterling Campbell, for inviting me. I feel uncomfortable with what has been going on in the last few weeks, and it has sort of drawn to my attention that perhaps there is something wrong in Canada. Up until this point, when a great deal of media attention was put on these meetings, I assumed everything in Canada was going along fine and that we were all working towards common goals and objectives.

What I would like to say is that I feel the media have let us down, and perhaps the Premier and even the Prime Minister, in attempting to explain to us what they are doing and what exactly this Constitution means to all Canadians. I just feel lost. Perhaps I should not be here because I do not understand what is going on, but that is why I am here. I am a Canadian too, just like everyone else, and I think there are a lot of people who feel the way I do but are perhaps afraid to say that they do not understand. That is why I am here.

Interjection: Who are you representing?

Mr Mens: I am representing no one other than myself and that is about it. I think I tried to explain these thoughts to Sterling, and maybe somebody has a question.

Mr Jackson: Fred, I think you are expressing the concerns of a lot more Canadians than we care to admit at this point in time. Perhaps it is in our nature as citizens of this country. Perhaps it takes a crisis to put in perspective our daily lives, which are so complex and hurried that we cannot fathom a country somehow being divided. But the Meech Lake accord is a much subtler document in terms of the reduction of federal

powers and increasing provincial powers, and unfortunately the debate has been focused entirely on one province. But I thought it was an interesting concept.

A couple of concepts were shared with us this morning in Ottawa and I would like you to respond to them. One was, how come we have created a nation where regarding matters of our Constitution—which my sense of schooling taught me were sort of born out of the collective will of the people—we somehow got into a process, which predates current government, but that is no excuse, of first ministers' meetings deciding agendas and deciding our future. I thought it was a rather poignant point. As a matter of fact, it was an aboriginal leader who indicated that the 10 first ministers more resembled what we know as the politburo than it has any other political forum.

Do you get a sense, not that it is a politburo but that somehow our country has moved towards an agenda determined by first ministers and our frustration is that we do not deal with it whether behind closed doors or open doors? Even if it was done in a hall like this in front of the CBC or the good local Sudbury media, the fact is that people still do not feel a part of it. They would just be exposed to it more. Is that part of the frustration that you, as a Canadian, are feeling right now?

1740

Mr Mens: That is a fair way of putting it. I got the impression from watching the different ministers working—and obviously they are working on trying to do something and I have to commend them for making an effort to do something. I do not know what they are doing, but somebody is busy working hard in Ottawa and our Premier is trying to do something. Most of us in Canada have not done a lot.

[Interruption]

Mr Mens: Well, I think they are trying to do something and I have to give them credit where credit is due. I am not sure that how they are going about it is fair and I think that is what we are talking about here.

Mr Jackson: It is this lack of information. We had another quote this morning from Jeffersonian democracy. They quoted the Declaration of Independence and indicated their Constitution was set out as a model for all those who immigrated to the United States, the promise held out for all of us who count in our ancestry the fact that we immigrated to this country. They quoted from that famous document that governments derive their power from the consent of the governed.

Apparently it rang rather true that somehow we have relegated this to legislative assemblies. Meech would have all been neatly tied up in a package if we did not have a democratic process of electing people and several governments changed and for whatever reason their support for Meech Lake changed. There should be some accommodation of a referendum, not on whether Quebec should be in Canada, because that is more a question for the Quebec people to decide than it is for us in Ontario or any other province to determine, but for all provinces to determine in some forum just what they think of their Constitution and how it evolves for a nation.

Mr Mens: Not knowing the details of any of these agreements or understanding them at all, I thought Mr Wells was attempting to take information back to his people and to have them vote on something. Someone there was trying to explain to the Newfoundlanders what was going on and what these different agreements meant, and I think they have an opportunity to vote on it. I feel, as an Ontarian, that we should have some opportunity to vote on what is going on. I feel the information is fragmented. We are not getting a clear picture of the past and what the future means with these different agreements. I feel lost.

Mr Jackson: My final question has to do with the main reason for these hearings, which is to deal with the signed agreement or whatever we want to call it, the contract that was signed that Saturday night. Major elements include, for example, that the previous commitments to set priorities for aboriginal discussions have less weight, as does the need for Senate reform. There has been a change there, and also Ontario's offer to cut by 25% the number of Senate seats. All in all, we are told we have a little better than a week to have public hearings to discuss the issue of what the implications are for a reduced Senate for Ontario in a strong federal government or a weaker federal government because we have given the provinces even more power.

Is that the kind of thing you are saying we should be spending more time on? Your recommendation to this committee—I am trying not to lead you but, quite frankly, I am—is that we need more time to discuss and not be hastily told that this resolution be passed by the Ontario Legislature on Wednesday afternoon when we have not really had public hearings, if truth be known. Sterling and you have talked, but you did not read about it in the paper. This was all by word of mouth. That is the experience we had this morning in Ottawa and it is the experience we are going to have tonight and tomorrow morning when we are in Windsor. Your comment, please.

Mr Mens: You know a lot more about it than I do, and you sound confused.

Mr Jackson: On that note—I did not think you were a Liberal.

The Chair: We will move on to Ms Munro.

Ms Oddie Munro: I think we are hearing a lot of positive suggestions for bringing issues of this import back to the people. Of course, we in government have heard it on a number of different aspects of legislation. So I think you are here for a good reason, and I think communication is one of the things, a very doable thing, that we should be reporting back from your presence here and everyone else's.

I do not think there is anything more to say on that if you do not know why you are here and I cannot communicate with you. It seems to me that we are in a society where we have been able to communicate for years and there must be a way in which we can do it. That is the challenge that you are putting forward.

Mr Wildman: Just very briefly, I want to commend you for coming forward and expressing your confusion and your concern. The constitution of any country and particularly the Constitution of Canada belongs to the people. It is a fundamental law of a people, so I want to commend you and just ask a short question.

Over the last few days, during the hurried period that this committee has had to work, we have heard a lot of concerns expressed regarding aboriginal rights. We have heard them here this afternoon, we heard them in Ottawa this morning and we also heard them last week in Toronto. Would you, as a Canadian of goodwill, because you seem to demonstrate that, be prepared to see aboriginal and treaty rights such as the right to hunt and

fish, which other Canadians do not have, recognized for Indian people in our Constitution?

Mr Mens: I have not read enough about it. I think it is unfair for me to comment on that at this time. I like to see everybody in Canada treated equally. It is just that simple. I realize the natives have some preference and possibly should be given some, and I think they have been given some.

Mr Wildman: I understand that and I appreciate your answer. I would just point out that the audience has expressed a lot of support this afternoon for aboriginal rights, and the one I mentioned is one that the aboriginal people are quite legitimately demanding.

[Interruption]

Mr Wildman: I suspect the audience, in showing its approval of that, must be in favour of treaty Indians being treated differently from other people in the country. That is, of course, what the aboriginal people are requesting.

[Interruption]

The Chair: Ladies and gentlemen, Mr Mens has the floor, please.

Mr Mens: There is one other thing. In all the discussions and the things I have heard or seen on television lately, everybody seems to be trading one thing for another and trying to get something out of Canada. Somehow the concept of putting more into Canada seems to have gotten lost. That is the feeling I have. I feel we are all trying to get something out and one group is trying to trade off one thing for another. I thought we were all working together here.

1750

ASSOCIATION CANADIENNE-FRANÇAISE DE L'ONTARIO

The Chair: Our next group is Michel Rodrigue and Jean-Charles Cachon de l'Association canadienne-française de l'Ontario. Could you come forward, please?

On a donné une demi-heure pour votre présentation ; j'espère que vous allez laisser du temps s'il y a des questions à la fin de la présentation.

M. Rodrigue : Oui, d'accord, merci.

[Interruption]

The Chair: Ladies and gentlemen, please. Could you give these people the respect that we gave all others this afternoon? We would like to have them heard.

Commencez, s'il vous plaît.

M. Rodrigue : L'Association canadienne-française de l'Ontario, régionale du grand Sudbury, est heureuse d'avoir...

[Interruption]

The Chair: Order, please. We can give you receivers so you can listen to the translation if you like.

[Interruption]

M. Rodrigue : Est-ce que je dois attendre ou poursuivre ?

M. le Président : On va attendre une minute.

Is there anyone wishing to get the equipment? You can get a piece of equipment in the corner here which will provide you with the translation.

[Interruption]

The Chair: Yes, he is. He will hand out the equipment. We would appreciate that it be returned after the presentation.

[Interruption]

The Chair: I am sorry, that is not the intent of the committee. Obviously we want you to be able to listen.

Ladies and gentlemen, they can speak in one of the official languages of the country and they are entitled to speak French. They will speak in whatever language—

[Interruption]

The Chair: I am sorry. If necessary, we will adjourn these committee hearings.

Mr Wildman: I think we should take whatever time is required in order to enable people to get the translation equipment. I appreciate your offer to do that and I think that everyone in this room should show as much respect as possible to all of the witnesses, no matter what their position.

The Chair: Has everyone who wants a receiver received one?

Channel 2 is the channel that you can listen to for the translation. All right, I believe everyone who wants one has one. We will commence.

Continuez, messieurs.

M. Rodrigue : Je recommence. L'Association canadienne-française de l'Ontario, régionale du grand Sudbury, est heureuse d'avoir le privilège de comparaître devant le Comité spécial des affaires constitutionnelles et intergouvernementales. Est-ce qu'il y a un problème ?

The Chair: Try channel 1, I am told. Could you help me, please? Channel 1. Thank you.

Continuez, monsieur, je m'excuse.

M. Rodrigue : Donc, nous sommes heureux de comparaître devant le Comité spécial des affaires constitutionnelles et intergouvernementales de l'Assemblée législative de la province de l'Ontario, qui a le mandat d'étudier l'entente constitutionnelle signée à Ottawa le 9 juin 1990.

L'ACFO a été fondée en 1910 comme une association provinciale. Son objectif est de favoriser le développement et le bien-être des 500 000 Franco-Ontariennes et Franco-Ontariens. Le conseil régional de Sudbury existe depuis près de 20 ans et a le même objectif dans le district de Sudbury.

Après des mois de débats publics sur l'avenir du pays, force nous est de constater que nous nous éloignons souvent du but recherché au départ, c'est-à-dire, de souhaiter la bienvenue au Québec à la table constitutionnelle dans l'honneur et l'enthousiasme. Durant les heures les plus sombres des derniers mois, nous avons été témoins d'intolérance et d'intransigeance vis-à-vis des droits des Franco-Ontariennes et Franco-Ontariens et des francophones du pays. L'accord du Lac Meech semble avoir été l'un des prétextes pour déclencher l'hostilité de forces antifrancophones au Canada. Le débat initial servait maintenant de support à des réactions hostiles au Québec, aux Franco-Ontariens et Franco-Ontariennes, à la dualité linguistique du pays. Le Nouvel-Ontario et même Sudbury ont subi les attaques des antifrancophones de l'Ontario.

Nous sommes d'avis qu'il est primordial pour le Canada de réintégrer le Québec dans le giron constitutionnel. Cette étape accomplie, et une fois l'accord du Lac Meech entériné par toutes les provinces, nous pourrons débuter immédiatement un

processus visant à traiter des questions auxquelles les Canadiennes et Canadiens attachent une grande importance. Nous sommes convaincus qu'un nouvel échec constitutionnel entraînerait une conjoncture sociale et politique fragmentée et tendue et qu'il serait alors extrêmement difficile, voire impossible, de s'attaquer à d'autres problèmes.

L'erreur de plusieurs Canadiennes et Canadiens est de vouloir utiliser l'Accord pour y ajouter des éléments nouveaux comme si c'était le train de la dernière chance, alors que le processus de modification de notre constitution, prévue par celle-ci, indique bien qu'il s'agit d'un document qui, à l'image de la société canadienne, est en constant devenir.

Au nom de près de 50 000 francophones de la région de Sudbury, l'ACFO du grand Sudbury tient à souligner son appui sans réserve à l'accord du Lac Meech en sa forme originelle ainsi qu'à l'entente constitutionnelle, signée à Ottawa le 9 juin 1990, puisqu'elle assure la continuité du processus de réforme au pays et qu'elle ne menace pas l'intégrité de l'accord de 1987.

La promotion par le gouvernement fédéral de la dualité canadienne doit être vue, selon nous, comme une mesure de progrès de la langue et de la culture françaises au Canada. Au Canada anglais, elle constitue une clause de rattrapage et de réparation pour les minorités francophones du pays, et pour la communauté franco-ontarienne de notre province. Chacun sait bien que c'est la langue et la culture françaises qui ont besoin de promotion au Canada. C'est là, à notre avis, l'objectif véritable de cette clause.

Nous exprimons, par la présente, notre volonté que les gouvernements canadiens traitent de façon prioritaire, dans la prochaine ronde de négociations constitutionnelles, les thèmes suivants : la mise en oeuvre complète et totale du droit à l'éducation dans la langue de la minorité officielle, y compris le droit à la gestion de toutes les institutions d'enseignement, du primaire au postsecondaire inclusivement ; l'engagement par le fédéral de faire la promotion de la dualité canadienne ; et la reconnaissance des droits des autochtones.

1800

Ce n'est que dans le cadre de cette prochaine ronde de discussions constitutionnelles qu'il sera possible à tous les intervenants de recommander et de déterminer les mesures à prendre pour assurer la progression vers l'égalité des traitements des minorités de langues officielles au Canada. L'écart est présentement grand entre le traitement des minorités de langue officielle au Canada. Dans le domaine de l'éducation, par exemple, seulement deux minorités de langue officielle possèdent des universités, soit trois au Québec et une au Nouveau-Brunswick. Les Franco-Ontariens et Franco-Ontariennes souhaitent ardemment, et ceci depuis déjà plusieurs années, la fondation d'un réseau universitaire de langue française en Ontario. Les mêmes demandes ont été faites en ce qui a trait à un réseau collégial homogène de langue française. Encore à ce sujet, nous sommes malheureusement témoins d'une disparité entre les minorités de langue officielle au Canada.

Pour conclure, l'ACFO du grand Sudbury propose que les prochaines discussions constitutionnelles portant sur les minorités tiennent compte des deux principes suivants :

Que les provinces s'entendent pour que toute personne membre d'une minorité de langue officielle ait accès à des services équivalents à ceux disponibles pour la minorité de langue officielle la plus favorisée. Cette clause signifierait que, dans plusieurs domaines, la minorité officielle d'expression anglaise du Québec servirait de base de référence pour développer des services équivalents en Ontario auprès de la minorité d'expression française ;

Que le développement futur des minorités de langue officielle au Canada, et particulièrement en Ontario, devra se faire sur la base du développement d'espaces de vie définis par les membres de la minorité.

Un «espace de vie» peut se définir comme un ensemble de conditions jugées par une minorité de langue officielle ou autochtone comme susceptibles de favoriser le développement de cette minorité. Par exemple, un centre sociocommunautaire, incluant clinique, garderie et services familiaux pour les francophones de la région de Sudbury ou de Chelmsford pourrait constituer un de ces espaces de vie.

Un «espace de vie» se définit aussi comme un milieu autogéré par la minorité. Par exemple, il est logique de penser qu'un campus postsecondaire d'expression française, construit au centre de la ville de Sudbury, comprendrait des locaux du collège du Nord et de l'université de l'Ontario français, les deux institutions en question étant autonomes et autogérées par les Franco-Ontariennes et les Franco-Ontariens.

Il est également clair pour l'ACFO du grand Sudbury que de tels principes devraient s'appliquer aux autochtones de manière similaire.

Alors, je vous remercie. Mon nom est Michel Rodrigue et aussi je vous présente Jean-Charles Cachon.

Mr Wildman: In regard to the current situation in which we find ourselves and what I consider to be the legitimate demands of Elijah Harper and aboriginal people of this country—I preface this by saying I recognize in your presentation your suggestion that native people's rights should be recognized—how do you think the Ontario Legislature should proceed in view of the concerns that have been raised by aboriginal people in Ontario, across Canada and particularly in Manitoba, and the fact that the Meech Lake accord may fail unless the aboriginal people are satisfied that their rights will be dealt with properly?

M. Cachon : Je pense que, du point de vue d'une Assemblée législative provinciale, vous êtes dans une situation assez difficile puisque tout ce qui concerne les relations avec les peuples autochtones est géré par le gouvernement fédéral et par des traités qui sont de nature fédérale.

La seule juridiction dans laquelle on voit régulièrement, en tout cas, le provincial s'ingérer, c'est la question de la chasse et de la pêche : la gestion des terres, la gestion forestière et le reste. Je pense que de ce point de vue-là, il est certain que les provinces, comme l'Ontario et d'autres, peuvent certainement ménager ces espaces de vie dont ont parlait pour les autochtones comme elles peuvent le faire pour la minorité française. Donc, de ce point de vue-là, je pense que, certainement, on devrait commencer à regarder sérieusement des idées qui pourraient conduire justement à une plus grande autonomie chez les peuples aborigènes.

Mr Wildman: I appreciate the response, but I would just say briefly that in the view of the aboriginal people, it is not developing rights but recognizing rights that already exist.

M. Allen : C'est une reconnaissance des droits qui existent maintenant, mais c'est aussi une question de ce que signifient ces droits. C'est le problème avec les premiers ministres, M. Wildman, comme vous le savez.

D'après vous, messieurs, quelles seront les circonstances des autochtones de notre pays après le 23 juin si on refuse l'accord du Lac Meech, les circonstances constitutionnelles ?

M. Cachon : Je dois vous dire que je ne suis ni juriste ni constitutionnaliste. Donc, je vous réponds en tant que simple citoyen qui connaît relativement peu de choses en détail sur toutes ces questions-là.

Il me semble que, d'après ce qui a été dit aujourd'hui et ce qui a été dit ailleurs depuis plusieurs mois, jusqu'à maintenant il y a eu, effectivement, depuis la Confédération, une espèce d'absence des autochtones sur le terrain constitutionnel. Donc, j'ai l'impression que si l'accord du Lac Meech passe ou non, la situation des autochtones restera à peu près la même. La seule chose, c'est qu'ils ont commencé à exercer des pressions qui, pour la première fois, semblent avoir un certain effet.

Mr Jackson: I can understand the references to Bill 75 and education in your presentation, but it sparked some questions in my mind. You made reference to the three institutions where minority languages are recognized in Quebec and one in New Brunswick, but are they not bilingual institutions?

M. Rodrigue : Non, elles sont unilingues anglophones.

Mr Jackson: Even the one in New Brunswick?

M. Rodrigue : Oui, elles sont unilingues francophones. Ils ont même divisé le ministère de l'Éducation en deux : francophone et anglophone.

Mr Jackson: When you referenced the recognition of minority languages in New Brunswick, that has been acknowledged in its provincial Legislature. In Quebec, that has been acknowledged and adjusted in recent matters, but acknowledged none the less. But in Ontario, that recognition is not as distinct as it is in the other two provinces. It has evolved.

I am trying to reconcile your suggestion that the access to educational rights evolves from your context in a national sense of language protection, as a minority language, but then in a simple statement you transfer those same rights to aboriginal peoples with their right to have their schools and access to a similar quality of education and programs.

I am just trying to understand how you reconcile that leap from a framework which is recognized to another framework which is not. Do we extend beyond just French, English and aboriginal? Are we dealing with any minority group in Ontario? I am just trying to understand. This is a new concept to me from your agenda, which I am familiar with.

M. Rodrigue : C'est peut-être la présentation qui n'était pas aussi claire qu'elle aurait dû l'être. Non, la partie qui traitait du postsecondaire et du secondaire, le droit à l'autogestion, le droit à la gestion au niveau postsecondaire aussi s'appliquait aux minorités officielles du Canada. Donc, le commentaire a été fait dans ce cadre-là.

Le cadre où nous croyons qu'il est important d'inclure les autochtones, ce serait le cadre d'un milieu de vie, de l'autogestion de leurs institutions. Là-dessus, on ne veut pas imposer parce que nous, nous savons ce que c'est de se faire imposer des choses par d'autres. Donc, ils ont été ici et ils ont bien exprimé leur point de vue. Mais ça ne se rattachait pas, les deux, entre les minorités de langue officielle et les droits des autochtones.

Sauf que nous croyons effectivement que l'on doit traiter des droits des autochtones. Notre point de vue, parce que nous croyons qu'il est important de réinsérer le Québec dans le giron constitutionnel, est de traiter les droits des autochtones, de façon prioritaire, dans la prochaine ronde de négociations constitutionnelles. Nous serions très heureux si le gouvernement de l'Ontario prenait cette direction.

1810

Ms Oddie Munro: I think we have all been very touched by some of the problems and perceptions that have been accorded to the francophone population through Bill 8, which is the provision of French-language services in Ontario. I think what you are seeing is a committee here that is saying: "What should the Ontario government be doing in terms of communication? In the case of these discussions under way on Meech Lake or the Constitution, again, what does the whole communication picture look like?"

I do not know. We have heard the aboriginal people saying that they are not against the people of Quebec but that they are against certain aspects of the deliberations in the Meech Lake accord. I am wondering whether you could give us any suggestions for the kind of dialogue on language as it relates to the Constitution that should take place, in terms of educating, so that we are not always putting people through another series of discussions, whether they are multicultural, English-speaking, French-speaking or native peoples. What kinds of suggestions do you have?

I do not know that the province, for example, has ever convened a meeting just for sharing of information on language. We have more or less left it to the federal government to do that. I am wondering whether we are bearing the brunt of that kind of thing.

M. Cachon : Je pense que vous soulevez toute une question. Au départ, en fait, on sait fort bien que les livres d'histoire sont différents l'un de l'autre lorsqu'ils sont écrits en français et lorsqu'ils sont écrits en anglais. C'est déjà un problème, je pense, dans le système scolaire lui-même.

Maintenant, si on parle des relations entre les gouvernements et le public, je crois que la question des législations sur les minorités de langue officielle est la même que pour d'autres questions. Trop souvent, et ça a déjà été dit par notre prédécesseur, le gouvernement crée des commissions ou invite des personnes... J'ai déjà fait partie de ce genre de commission où l'on nous disait : «On va vous consulter pour réviser, par exemple, les lois sur la consommation». Je faisais partie d'une commission de ce genre-là il y a trois ans et on n'en a plus entendu parler. Pourtant, personnellement, je me considérais comme étant compétent dans ce domaine-là de même que la plupart des 20 ou 30 personnes de tout l'Ontario qui y participaient. On nous a fait venir une fois pendant une journée à Toronto et ensuite on ne nous a plus convoqués ni indiqué quoi que ce soit.

Alors, effectivement, je pense qu'il devrait y avoir des procédures beaucoup plus systématiques pour faire participer le public, mais je dirais un public éclairé. C'est-à-dire qu'aujourd'hui, comme d'autres, nous sommes ici par hasard. Il aurait été souhaitable que des processus soient engagés de façon systématique, cohérente, bien planifiée et qui permettent justement d'engager une participation beaucoup plus importante de Monsieur et Madame Tout-le-Monde au processus législatif.

Mais, je crois qu'il y a une autre question également qui est reliée à cet ensemble d'appareil décisionnel gouvernemental qui est aujourd'hui très loin du citoyen : ce sont certains domaines où les gens ont des compétences sur le plan local et peuvent faire un certain nombre de recommandations en ce qui a trait à l'application locale de certaines lois et de certains règlements. Je pense que là aussi, on devrait prendre cela en considération.

Est-ce qu'il est souhaitable d'avoir des lois, par exemple, sur la vitesse sur les routes, qui soient les mêmes partout en Ontario quand on sait qu'il passe peut-être une automobile à l'heure sur la plupart des routes du nord de l'Ontario ?

Mrs Cunningham: I am wondering if you would reflect your views on part of the constitutional agreement that we have been looking at in order to take back recommendations to the province. Have you given thought to the amendments that appear to be somewhat more necessary because of the more recent developments with regard to the aboriginal concerns that we have all been witnessing over the last few days, with regard to the time frame that within one year there should be a constitutional conference and that the aboriginal people should not just be invited but should be members of that first ministers' conference? Have you given thought to that request as we have all listened to it today?

M. Rodrigue : Je dois réitérer le fait que nous ne sommes évidemment pas des experts en matière constitutionnelle. Ce qu'on peut dire c'est que nous aussi souhaitons que la prochaine ronde de négociations débute immédiatement — «immédiatement» c'est le plus tôt possible — et que les questions qui sont chères aux autochtones soient mises en priorité dans ces négociations-là.

Alors, en termes d'échéancier, en dedans d'une année me semble raisonnable. Sauf que, nous avons vu que certaines fois ça prend une éternité pour traiter des questions constitutionnelles, et en d'autres occasions ça se règle en une fin de semaine. Mais en tous les cas, bref, ça me semble tout à fait correct.

Mrs Cunningham: I appreciate that. Thank you for your response there. You are saying that you approve of that and that it should be a priority matter for constitutional discussions, and I thank you for that.

I have another observation I would like you to reflect on if you would. You talked about being part of commissions. I recognize your frustration where people meet and no one does anything with them. It seems to be too common, does it not, in Ontario and probably across Canada, but a commission has been recommended as part of the constitutional agreement.

Again, the aboriginal peoples are saying they would like to be part of those discussions and invited members right at the table and that is to take place before the end of 1990. What is your view on that, given the developments of the last few days?

M. Rodrigue : Pour revenir à la question de base, il nous est important de traiter des questions des aborigènes ou des autochtones. Mais il nous est tout aussi important de traiter des questions qui sont chères aux minorités officielles au Canada.

Du côté échéancier encore, il nous est difficile de vous donner des commentaires qui seraient des propos intelligents. Je crois que les gens qui représentaient justement les autochtones sont venus vous faire des recommandations et je vais m'en tenir à eux pour traiter des choses qui leur sont propres. Je vais encore réitérer un fait, c'est que, comme minorité, nous sommes souvent un peu choqués que ce soient d'autres gens qui parlent pour nous. Nous sommes totalement capables d'exprimer nos opinions et nous croyons et considérons que les autochtones sont capables de faire de même.

Mrs Cunningham: Thank you. I guess in asking the question I wanted to see a recognition of the priority and I think I did get that.

M. Rodrigue : D'accord.

M. le Président : Merci beaucoup, messieurs et merci pour votre mémoire. Ce fut un plaisir de vous avoir ici cet après-midi.

1820

Mr Wildman: Mr Chairman, just on a point of order, not in relation to this presentation: Would it be possible for our counsel to get some information that might clarify the aboriginal issue for the committee?

I would like to know whether my understanding is correct that constitutional negotiations in 1981–82 resulted in a provision being made that aboriginal rights should be entrenched and that there would be a series of constitutional meetings to deal with defining those rights. If so, it is not as if it is something new. Those meetings failed. There was not agreement on the definition.

The aboriginal representatives have said to us they find it unacceptable that first ministers should throw up their arms and say, "We can't define them, we haven't reached an agreement," yet they would go over everything possible to come to an agreement regarding Quebec. Now those rights that were mentioned in the Constitution at that time are being defined by the courts in the recent court decisions.

Perhaps if we could get counsel to give us some description of the sequence of events and what in fact the situation is with regard to the status of aboriginal rights in the Constitution, it might be helpful to the committee.

The Chair: It is not a point of order, but certainly legal counsel—

Mr Wildman: Well, no, obviously—

[Interruption]

The Chair: I am sorry, sir?

[Interruption]

The Chair: It is. It is going to be, if you would just please be seated. We are getting right to it.

Mr Wildman: I am sorry. I was not trying to take up the time of the committee and it is not a point of order. I am just asking for the counsel to do that.

The Chair: Counsel has it and he will do what he can to accommodate you.

As you well know, when we arrived here we indicated that, time permitting, we would hear some presentations from individuals who wish to appear before the committee. We have about 35 minutes. There are 10 people who have indicated that they wish to come forward. We would ask you to come to the microphone, state your name clearly, make your statement, please make it two or three minutes and then leave time for the rest of the people who want to be heard as well.

BERNICE STEWART

Mrs Stewart: I thank you very much for having the courtesy of affording a few more minutes to those of us who were not on the list in the proper way that you do things.

I know you have listened to some very important people. Unfortunately, I am not a terribly important person, except maybe to my family and some people in my community. But I am a part of the electorate of Ontario, and I thank you for giving us the opportunity to speak here.

These hearings, all four of them, seem to be of very true concern to every Ontarian. Why would you wait until a few days before the Meech deadline to come to the people of Ontario for their input? How can you show such blatant disregard for the concerns and the wants of the Ontario electorate and wait so long?

Right now, I really do feel Mr Harper out in Manitoba is probably representing many of us in Canada better than our own elected officials are doing right here in Ontario right now. You may find I am repeating some things that have already been said.

Our Senate definitely does need some reform, but why at the cost of the people of Ontario? Mr Peterson, how dare you take it upon yourself to make a decision of such magnitude as the giving away of Senate seats without even consulting the elected members of this province. How can you possibly give away something that belongs to the people of Ontario without their permission?

We already pay millions of dollars in our hard-earned tax money in tax transfers to these other provinces. Must you start stripping us now of the other privileges that belong to us, the Ontarians? You have given another province the status of Senate majority. What happens if, at a future date, the Senate becomes a more powerful player in the Canadian government system? You have given away part of our power if that system gains.

As for the distinct society, not only a lot of Ontarians but many Canadians are having a hard time figuring out why a Canadian child born in Quebec or of French heritage should enter this world with more special status. Would you expect a mother who has 10 adopted children from different ethnic backgrounds to wake up one morning and tell these children that one is more special than the other? That is exactly what you are doing. We are the children of this country, each province, and you are telling the remaining nine of us that that one other province is more special than we are.

We have become a multicultural country and that is a reality. We spend millions of dollars promoting multiculturalism in Canada, yet the federal and provincial governments are using Meech to tear apart this way of thinking by trying to provide one cultural group with a special and distinct status. Meech was originally, and should be, uniting our country, not tearing it apart.

We came into this world as equal human beings. Where do you, the government, get off deciding that we are otherwise? Whether our heritage is Polish, German, native Indian or Chinese, is not every individual of this Canadian country special and distinct in his own way? You are damned right we are, and you are forgetting it.

I urge you to put the past behind us. Let's get on with being Canadians and living in a unified Canada, able to say we are Canadian first and foremost. No one says that we cannot do this and still be proud and respect the roots of one another's heritages.

Right now, we have thousands of young people born and raised in Ontario not working. Many did not have the talents or the privileges to attend schools providing second-language skills. These young folks are being ignored, rejected and refused many employment opportunities. The biggest offenders are the federal and provincial governments. Why? Because in Ontario they are not bilingual.

Remember, being bilingual does not mean being proficient in English and German, English and Italian or even in English and Yiddish. Our government defines "bilingual" as being able to be completely versed in English and French. It is a sad situation.

Here is a thought for you of the top 10 in the country that we have right now who are making these decisions. With the kind of money that we are spending on education, provincially and federally, could we not have one quality system through Canada that would allow every young Canadian equal future opportunity? If we did this, in 20 years' time we could have a whole group of young people out in our workforces who would be proficient in one or more languages. Please quit taking us backwards.

It is a plain historical fact that cultures must adapt and accept change or they perish. By struggling to create a distinct society for the Quebec people, you are in turn creating anger, bitterness and hard feelings among many more Canadians than you realize. You are trying to create for one culture a distinct society. Well, you know, the idea just stinks.

The Chair: Thank you, Mrs Stewart.

Mrs Stewart: I do have one question. I would like to know—

The Chair: I am sorry. We have to be fair. We have others who would like to present, please. We would like to hear from them as well.

Mrs Stewart: I just want to know the reality of what you are taking back to Toronto. Is it really going to make any difference for those of us who have taken the time to be here today?

The Chair: Hearing you and learning what the people think always makes a difference.

1830

B. SWEET

Mr Sweet: I would like to thank the committee for allowing us the opportunity to come and express our views today, although I know that, as someone has already said, it is a token in goodwill.

I speak not as a francophone or an anglophone. I speak as a Canadian. I served my time in the Canadian Armed Forces, not for Quebec or Ontario, but for Canada. I served next to two Quebec regiments, the Vandoos and the Chaudière regiment, great people. I am not opposed to bilingualism, if that is what it takes.

I remember going to Quebec maybe 20 years ago, when I was a president of a Canadian association, at the time of the Front de libération du Québec. We had a meeting of representatives from different provinces. A fellow got up and spoke French—and I would like to thank those two gentlemen who came here and addressed this group in French; I thought it was great. At the time he got up and spoke in French and I asked him, "Don't you think that with 20 people here, only three people speaking French, it might be better to speak in English?" He pounded the table and told me that he had that right.

That was 20 years ago. I thought he had that right and I told him so. I said, "You have a right to speak French at home. You have a right to speak French in the courts. You have a right to speak French in the streets. You have a right to speak French anywhere—provided somebody can understand you."

I told him I was sorry that at the time he did not have someone there who could translate for us, that he would have to wait until I got my own translator, because I felt that it was ignorant to come to a province where nobody could understand

what he was saying. I went and got my wife, because my wife is of French background. I do not say a francophone, but I say of French background.

Needless to say, it took quite some time. But, the same as these two gentlemen who were here, they could understand without the translation service because they spoke English. This fellow spoke to us in English that night. It was a disappointment to me. I understand what these people are talking about, but with 40,000 people of French background—I do not say they are all francophones—in Ontario, in Sudbury, does that mean that the other 50,000 or 60,000 people have to suddenly speak French?

I do not mind anybody in government who is bilingual. You have to understand both if you want to exist today. I do not mind anybody anywhere, but I dislike having to phone the city hall in Sudbury and somebody answering me in French until I speak English. I think they ought to answer me in English, and if I want to speak French, that is their opportunity. I think that is great, if that is what you want.

In the federal government of Canada, they have moved federal offices all over this country, and anybody who wants a job must be bilingual. I think by doing that, they have spread the French language across the country, which is great, because they are bilingual and they have to speak English. I am not opposed to bilingualism, but I am opposed to it being pushed down my throat. And that is what I object to.

I am in favour of everything that these people have said here today. I wish they were still here. I know that it is late and some people have to go. I just had to stay because I felt that it is something that has lain dormant for two years, and suddenly every government in Canada is forcing something on people. I am sure there are a lot of people who object. There are a lot of French people that I know here who object to the Meech Lake accord, and they do not say something because they are afraid to. They do not want to hurt anybody's feelings.

I do not want to hurt anybody's feelings either, but I just feel that the Premier of Ontario has given away a right that belongs to the people. I can certainly see what has been said here today. I can understand what has been said here today, but I am opposed to the Meech Lake accord. I would like to see it not go through so that they can renegotiate. I do not believe that Quebec is going to leave the country of Canada, in no way.

I want to thank the committee for allowing me this time to come and say what I feel.

GEORGE CAST

Mr Cast: I am lucky to be here today, considering the lack of information available in our community on the nature of this committee. I had heard once, fortunately, through my wife mentioning to me that she had heard it on the radio. Unfortunately, I did not get my paper with the announcement delivered to my house. I did not figure someone had planned that.

Today I phoned the office of my MPP, Shelley Martel, and could not get any information whatsoever as to where to phone to find out anything about where to register to be heard on this committee. I phoned the office of my federal MP, Mr Rodriguez. He said they were not even sure where the meeting was but they were working on getting some more information.

I phoned the chamber in this building and I was misdirected. That was this morning. I was told that you have to write to get permission to be on this committee. I said, "Well, it's a little late for that." That is the information I was given this morning.

I am disgusted with the way in which our government has handled Meech Lake from the beginning. I give no credit whatsoever to this committee. People have not been given proper notice and this committee has not been allotted enough time to properly hear the people of Ontario.

I suspect that the committee has already formulated the results before it started; what I mean is, following their party lines. I can say what I like and I believe you will listen. Everybody looks good in front of the cameras, but I believe they take their party line home and that is what they will end up taking home.

On the point of Senate reform, I am for that, but I do not believe it can be dealt with in a companion agreement. The fact that Premier Peterson is willing to give away six Senate seats and Quebec is willing to give nothing is a good indication of Quebec's views on equal representation.

It is a waste of time to sit at the table with a province such as Quebec to discuss protection under the Charter of Rights when it has clearly shown complete disregard for the rights of Quebeckers in their own province; by this I mean the 800,000 Anglos in Quebec. As well, there are Mr Bourassa's statements last week that the native people of this country can no longer look to Quebec for support. These items, along with women's rights, minority rights and the disabled, should have been engraved in the main body of the Constitution.

Last week in Toronto I watched this committee cut people short on time. Today, for a half-hour—in Toronto I noticed it was 20 minutes—people with good cases against both Meech Lake and the process of this committee, people the likes of Joe Armstrong, who I thought had a fabulous case, were allotted one question.

The women's groups were well prepared, unlike the rest of us who only had a day to get ready. These people already had their cases ready, and they just did not have the time allotted to present their cases or the time to have this committee ask them questions.

On the same day in this committee, I remember hearing it mentioned, someone said—and I forget exactly who said it—that they had tossed around the idea that since not enough people were showing up at these committee meetings, perhaps it is a foregone conclusion that we are not really interested. Well, if we were informed, believe me, this would be in an arena in this community; it would not be held in this chamber.

Not to mention that the accord has yet to be ratified in Newfoundland and Manitoba, the thought of rushing this companion agreement through Ontario to send a message to Newfoundland and Manitoba is ludicrous. You do not rush through things that will affect future generations of Canadians.

I am a Canadian first, before all else, and I am a firm believer in Canada and true democracy. It was for these issues that my late father and many other family members fought in the wars of the past and for which I am willing to stand up and fight for today. Up to this point, the only weapons I have had to use for my country have been my voice, my pen and my vote. These have now been rendered useless by the constant refusal of our governments, both federal and provincial, to listen to the people.

It is my greatest fear—and believe me, this is a fear, not something I wish—that if politicians continue to refuse to truly listen to the people, the next weapon I may be forced to use will be of a lethal nature and, I fear, on Canadian soil. Just for your information, my mother's side of the family is French, my father's side is English, my friends are both, and I expect both

to receive the same treatment under the Charter of Rights whether it be in Ontario, Quebec, Newfoundland, British Columbia, coast to coast.

1840

BRENT RIDLEY

Mr Ridley: I am from Sudbury. I could speak for a month on Meech. I have been speaking about it since 1988—I do not know what you people have been doing—but I will keep it short.

The veto power and the unanimity clause in the Meech Lake accord: We are going to have nothing out of that. Meech places natives and Inuit people under more control of the provinces than they live in right now. Any one province can veto the treaties and future agreements for natives. Therefore, we will have no national equal treatment of native Canadians.

If anyone can claim it, these people may be able to. As I understand it, before the white man came, there were in excess of 90 million in North America. Within the first 300 years, they were gone, not because the white men were smarter but just because we had diseases which they were not immune to.

The Charter of Rights and Freedoms and the Meech Lake accord: Meech maintains the "notwithstanding" clause in the charter, allowing the provinces to opt out of the charter or its provisions affecting that province. Constitutional experts, even Bourassa, say that the accord supersedes the Charter of Rights. Therefore, the accord and the "distinct society" clause both override the Charter of Rights and Freedoms.

The week of closed-door meetings orchestrated by Mr Mulroney was the worst possible way to handle a constitutional amendment. Mulroney's crisis-building, confrontational style of negotiation was unfair and dishonest to the first ministers and to all Canadians. The signing ceremony compares to a sickening, self-serving academy award show of back-slapping.

However, premature as this was, the Newfoundland and Manitoba legislatures must approve this latest Meech mess. The hope is that Clyde Wells and Newfoundland and the pressures of the Canadian native people as funnelled through Elijah Harper in Manitoba will defeat this amendment. Such sweet irony that the Canadian natives may have the last say on the Meech Lake accord.

Remember, all five Quebec demands were granted, as Quebec did not compromise. Other provinces gave once again to appease Quebec, with an overall loss for Canada. The loss of Canada and the Quebec separation myths and bluffs have been maintained. Still, this is a constitutional amendment. We can have and will have many more as Canada evolves into the next century. If this amendment is passed, the proof of the Meech Lake pudding will be in the eating, and we will see who savours the most.

This accord is wrong, it is unfair and it does not provide equality in the federal system in Canada. Canada lacks a constitution as drafted by a constituent assembly elected for this purpose only: to provide a constitution approved by the people of Canada. There is but one political party I am aware of that has this as a concept. You people had better watch out for it: it is the Confederation of Regions Party. But if you steal that idea from us, you are welcome to it.

The Constitution of the United States was written this way. The Australian Constitution was passed this way, after three amendments and three national referendums. Now even the Ontario Community Newspapers Association, as endorsed by northern life here locally, recommends this process.

The only way a constitution for any democracy and any nation should be developed is by the people electing their representatives to a constituent assembly, with the specific instructions to draft a constitution which the people may then ratify or reject.

The Chair: Mr Ridley, could you bring it to a quick conclusion?

Mr Ridley: I was just about to do that.

I submit that each Canadian is equal and distinct in this country.

BILL STEWART

Mr Stewart: Let me state right from the beginning that I represent only this fellow here. I want that completely understood.

I too spent four years as an air gunner. I was decorated by the King of England and the Queen of the Netherlands and I believed at that time that I was fighting for the equality of all Canadians. At the moment, I regret every second that I spent over there. We are not fighting for equality here; we are fighting for special privileges for one province. That sounds like anti-French, mais je parle français aussi bien que je parle anglais. I speak French as well as I do English. I could speak French at the age of six. I was raised in a French-Canadian community and it was a lot better to speak French than get your ass kicked.

I believe in parliamentary democracy, and this requires that the people must have input. Do you know who the people are? It is John Doe, like me. We must have input into it. We had no input into Meech Lake whatsoever. If anybody tells me it was coffee that was served all night at Meech Lake, you are looking at the wrong guy. I know damned well it was not coffee. For 30 years we have had democracy. Elected people must do the will of the people.

For example, bilingualism was forced on the people: no vote or even campaign on the issue, just passed by our demagogues. Official languages: the same thing. The Charter of Rights and Freedoms: the people who fought for this God-damned country had no say in it. The "notwithstanding" clause: look what it does. In Quebec, my people, English to the core, cannot even put up a sign, and you dare to come here and tell me about equality. You do not even know the meaning of the word.

The founders of this nation were not creating two nations. That is a myth. They were creating but one nation with two languages. I get sick to my stomach when I hear, "We were here first." The people who were here first were the Indians; they were here 15,000 years before us. After that came the Inuit or Eskimos; they were here 5,000 years before us. The Norsemen were here 500 years before us. Yet there are some in our society who say, "We were here first." I have not seen any lately.

Nations are founded on the principle of equality for all. The French Revolution was fought on that. And you come here and you fight for the principle of making one province unique, way above everybody else. You have to have something wrong up here. It is equality for all or no nation.

I hope the Indian people in Manitoba argue it through and there is no Meech Lake. I have not drunk in 16 years. I am an alcoholic. The night that happens, I will get so drunk I will celebrate for a week.

I left a note on the chairman's desk. I hope he got it.

The process—this should have been held in the arena and it would have been filled, if you had had the decency to inform the public a week ago. There is just something the matter with

you. Do you not want the people to come out and speak? They would have been here in the thousands, I am telling you, because where I come from there is discontent.

I have a daughter who teaches high-school French. I have a daughter sitting in the audience who speaks French. I have a grandson who cannot even cut grass in the town in which I live, Chelmsford, because he is not bilingual. We make up 37% of the population. There are 54 people working there; 52 are French, two are not French. In the public library it is 10-0, in the post office it is 4-0, and where I buy my car licence it is 3-0. When my grandchildren go to get a job, my grandson could not even cut grass, damn it.

Let me say this: I went to the council and I could have filled the place. My daughter wanted to come, my sons wanted to come. I said, "No, for God's sake, keep away, because they are smart enough to get you into a shouting match, and that is all that will be printed in the Sudbury Star."

I made my presentation to the council and I said: "For God's sake, why don't you get equality a little bit? We make up 37% of the population. We want at least a third of the jobs." They listened with great interest, and when I was finished, one councillor said to me, "Mr Stewart, if you don't like it here, you can move," and in my humble fashion I told him where to go.

1850

MS E. MAHNT

The Chair: Ms Mahnt. I am going to ask if the rest of the presenters could please try to keep it to two or three minutes. We are going to run out of time. We do have a scheduling problem.

Ms Mahnt: In spite of that, I should like to add my protest to the lack of publicity. I would certainly have come appropriately dressed for the occasion if I had known I was going to be able to speak.

Second, as a very proud Sudburian, I would like to apologize to my colleague Jean-Charles Cachon and his friend Michel Rodrigue for the reception they received here. I would like the members of the committee to know that the people who created that disgraceful commotion do not represent the people of Sudbury. There are very few of them here, and the ones here in the room tonight are probably the most to be found in this city.

I came here to say that I would like the committee to know there are many of us here who want this accord to fail who certainly are not anti-French or anti-Quebec. I do believe that Quebec does constitute a distinct society and I do believe that the Prime Minister, in his vanity and his ignorance, has raised expectations in Quebec and divided this country in a way it should never have been divided, only to try to be the great fixer. Now we have almost ruined our country in so doing.

I believe we must be generous as our Premier has been generous. We must trust the people of Quebec with a distinct society. I believe that the courts in Quebec have a good record in interpreting the charter and therefore we must trust the people of Quebec because after what has happened we cannot now refuse what has been promised.

However, if we do allow the distinct society, we cannot also give every province a constitutional veto. Not every province is equal. We are putting ourselves into a straitjacket, locking ourselves in and throwing away the key. Let's give the distinct society a chance and then let's look at the Constitution again. How can we give Prince Edward Island and every province a veto over the Constitution? We are making promises to native people and then we are saying every province has a veto. How can we carry them out?

I am a professor of political science when I am not here. I have studied many constitutions and I know that if we allow that veto for every province to go into the Constitution, there will only be one way that we can change our Constitution, and that will be a referendum. If you think Meech Lake is divisive, how much more divisive will that referendum be?

Let's postpone this deadline. Let's be generous to the people of Quebec—I believe most Canadians are—and then take out the constitutional veto. Then we can talk about aboriginal rights and all the other rights that should be in there.

One more point I wanted to make was we would not have got into this mess if it had not been all men who were doing this.

GRENVILLE ROGERS

Mr Rogers: I am from Lively. The select committee, according to the paper, is here to hear northern Ontario's reaction to Meech Lake. Without belabouring the point, I think you have heard it pretty soundly. I would also like to quote Sterling Campbell, who has said, "I believe it is vital for the people of Sudbury to have the opportunity to express their views on our Constitution and the future of Canada."

I have a question for him. Does he, the members of the committee, our Premier and our Prime Minister believe it is vital that the elected representatives actually represent the views of the constituents? Up to now, I do not think that has been the case.

Listening is fine, but what about actually acting upon these suggestions that have come forward? I am very impressed and agree virtually totally with the submission by the native peoples, particularly the lady who first spoke.

A charade is defined as an absurd pretence. Canadians have been subjected to a gold medal performance in a charade in Ottawa. I do hope sincerely that this committee, this hearing here, is not a charade.

A crisis is a time of danger. To contrive is to plan and plot with skill. We have witnessed a contrived crisis with an artificial deadline. We have lots of time, I believe, to do a good job, and not in negotiating which presupposes that there are opposing views, but to collaborate, to work together to devise a Constitution that will reflect truly the will of the people, as has been stated by some previous speakers.

A conspiracy is defined as the act of combining together secretly for an unlawful purpose. I respectfully suggest that our three mainline political parties have to date conspired to deprive the people of Canada of true representation. I really hope that we can get back to really representative government.

In the paper not long ago, a gentleman was accused and vilified, I believed, for having stated that a traitor is one who is disloyal to his allegiance. But in fact there are those who would break up our country, and I am speaking now particularly but not solely of Mr Bourassa, who threatens to withdraw and so on, and even Mr Parizeau. This is traitorous.

I would like to quote Mr Wells, who has been referred to many times. Mr Wells was absolutely correct in summarizing the Meech Lake discussions, the recent ones anyway, as a terrible, unacceptable process: "It should stop. It should be abandoned. What's wrong with saying 'I'm wrong'? We have been wrong. We'll start over and do things right."

One of the previous speakers, I think the first lady, referred to the process as obscene. What Mr Bourassa said has been already referred to, that he is not trying to threaten or blackmail the native peoples, and yet that is exactly what it is.

There is a quotation in the newspaper about one Newfoundlander who said to Premier Wells, "The 'distinct society' clause in the accord would grant Quebec special powers and undermine national unity. Once you make Quebec different, that's the same as it being separate." I believe that is correct. Mr Wells responded by saying that all Canadian citizens must be equal, of whatever ethnic origin.

There is a sign up here, or has been, about the Canadian system of apartheid, and unfortunately I have to agree that we have a system of apartheid.

I am finished; thank you. I just hope this Meech Lake dies and is not even ceremoniously buried but that the Canadian people are given an opportunity to have meaningful, real input and that our legislators listen to us.

The Chair: We have three more presenters. We would like to hear them, but I am going to have to cut them off; three minutes for each of them and then we have to go.

1900

NICKEL BELT INDIAN CLUB

The Chair: The next group is the Nickel Belt Indian Club; Robert Recollet and Jim Eshkawkogon. We also have the Sudbury Native Brotherhood; Daniel Fuller. Could you be up here and ready to go?

Mr Eshkawkogon: I would just like to say we are representatives of the Nickel Belt Indian Club and we would like to voice some concerns about the Meech Lake accord.

We are not in favour of it. This accord was designed to bring Canada closer together. We do not feel it does that, and I do not think a lot of other Canadians feel that way. The aboriginal members of our association, roughly 900, are not in favour of it because the native rights are not guaranteed in the accord. We are not in favour of an extension for the deadline. We feel that it is just another empty promise. We also feel that this type of promise is just waltzing us around again.

I am not going to say I know a lot about the accord because, I am not ashamed to say, the thing was written up behind a closed door. I do not think a lot of Canadians understand what it is all about. But natives were not even allowed to meet with the ministers last week when they were meeting. In 1987, when the talks had failed with our native leaders of this nation, Mulroney promised more constitutional talks, but we have not seen that and it has been four years.

My president was going to add to this.

Mr Recollet: Mr Chairman, panellists from our three different parties in Ontario—hopefully there will be others in years to come—as the president of the Nickel Belt Indian Club, I would add that we are representing people who live in urban and rural areas. We are not native people who are coming from the reserves, even though some of us do have our status and can go back to the reserve; we are the ones who are living in the cities and the urban areas.

In my membership, when we talk about the Meech Lake accord, it takes me back to this afternoon, when I was talking to my mother. She said, "Bob, are you going down to that meeting today?" I said, "Yes." She is one of the elders in our club. She said, "You know, I don't understand what this Canada is doing to us, the native people. I'm not in favour of that and hopefully, son, you'll go down there and tell those people on the panel that, as an elder." She does not appreciate this Meech Lake agreement because she does not understand.

There is nothing in there for the Nishnawbe people of this country, and the Metis, especially the Metis. There is nothing in there for the aboriginals who live off the reserve, but for the panel members who are sitting here, I think a lot of you have to be sensitized to the issues of Nishnawbe people.

In this province of Ontario we have different political groups and we have different political groups right across this country. When you are dealing with one nation or one group of people, you are dealing with different groups of people. You have the Union of Ontario Indians here. You have the Ontario Native Women's Association. You have the Treaty 9 Indians. Then you have the Metis and aboriginal association. I am very disappointed they are not here today making a presentation, because I am pretty sure they would speak against the Meech Lake accord too.

I just wanted the panel to know that, and when we are talking about the province of Ontario, and if anything wants to be set up in the province, Mr Peterson's government is going to have to deal with all of the native people in Ontario, not through just the specific type of groups, being reserve Indians. The urban native people outnumber the status Indians on reserves by almost two to one.

Anyway, as my mother said, I will tell you members that we are not in favour of this Meech Lake accord. Take it back, let the people decide, maybe have some ongoing discussions in the years to come about what Meech Lake is all about, and do not make us different kinds of people in this country.

The Chair: Thank you very much for your presentation. Mr Fuller?

Interjection.

The Chair: He left?

JOAN KUYEK

The Chair: Then the final presenter is Joan Kuyek.

Ms Kuyek: I was in my garden when I heard about this; I am sorry I am dressed this way.

I wanted to make two points, and unfortunately, in three minutes, I cannot do much with it.

First, I was in Quebec this weekend. I was at a meeting of 200 activists who were involved in the Pro-Canada Network and the Social Solidarity Network. A standing ovation was given to the native people when they asked for self-determination, and it was unanimously passed by people there that the Meech Lake accord should be allowed to die. I think that is important, because 50 of the people who were there were activists from trade unions and from popular groups in Quebec.

What I wanted to say here more than anything is that we have had misrepresented to us almost totally the position of the people of Quebec. There are a number of people in Quebec who want self-determination. I support them. There are a lot of people in Quebec who want to stay within Canada. The whole idea of a distinct society does not answer either of those needs or demands and does not give to the people of Quebec the right to govern their own future.

What the Meech Lake accord is about is the James Bay 2 agreement. It is about an $80-billion hydro project in the northern part of Quebec that will be blocked by the Cree demands. Also, it is funded by Wall Street. It requires a guarantee by the government of Quebec. If they cannot do it by themselves, that

may be blocked by the federal environmental assessment with another government.

The same is true of Alberta's support. They are talking about the Mitsubishi plant, the kraft mill in Athabaska—$80 billion again, all guaranteed by the government. Land claims are again brought into that.

What is happening to us is that we are being torn apart by the corporate agenda in this country, and things like the Meech Lake agreement have got to be seen in that light. The kind of thing that we are seeing here between French and English is about lack of jobs. It is about what is happening to northern Ontario. This place is being raped and pillaged by industry. The money has been taken out of here and the people do not have it, so they turn us against each other and make us fight and scream and yell over something like language, instead of getting on with some kind of agenda that would help us build a country together that is worth living in.

I think Elijah Harper is a hero and I think it is the best thing that has happened to us in years.

The Chair: Thank you very much for your presentation. Ladies and gentlemen, thank you very much for your indulgence, your patience and your co-operation. We certainly appreciate it.

I would like to make one point that a member has asked me to make. Based on some of the presentations, there was some suspicion that hearings had not been held on the Meech Lake document. I just want you to be aware that there were extensive public hearings on the first Meech Lake document in 1988, which was culminated by a report to the Legislature in that year. So there have been public hearings. We are here to try to deal with the add-ons, because Meech Lake has already been passed by the Ontario Legislature. I just wanted to make that clarification.

The committee adjourned at 1908.

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Constitutional accord

Comité spécial des affaires constitutionnelles et intergouvernementales

Accord constitutionnel

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL AND INTERGOVERNMENTAL AFFAIRS

Tuesday 19 June 1990

The committee met at 1010 in the Hilton International Hotel, Windsor.

CONSTITUTIONAL ACCORD
(continued)

ACCORD CONSTITUTIONNEL
(suite)

The Chair: Ladies and gentlemen, the committee will come to order. Welcome to the select committee on constitutional and intergovernmental affairs. The following matter has been referred to us by the House:

"That the select committee on constitutional and intergovernmental affairs be authorized to consider the 1990 constitutional agreement signed at Ottawa on 9 June 1990 (sessional paper number 400) and to report to the House no later than Wednesday 20 June 1990."

BRUCE GUNN

The Chair: Our first presenter this morning is Bruce Gunn.

[Failure of sound system]

Mr Gunn: I would just like to form opinions; I am not that much informed.

The Chair: Perhaps we can do that by having some of the committee members put questions to you and we can get a dialogue going, so we could get some communication going.

Mr Epp: Are you aware, Mr Gunn, that after the 1987 Meech Lake agreement by the first ministers this committee had about 80 days or something like that of hearings across the province and put out a fairly voluminous report? Everyone had an opportunity at that time to make themselves acquainted with the Meech Lake agreement and to ask questions about it. I just wanted you to know—and you may want to respond to this—that this is not something that has, all of a sudden, been dropped on to our lap. It has become more prominent recently because of the deadline of 23 June.

Mr Gunn: I appreciate that too, but most of us live with the newspapers, which tell us what to do and what we think. Then on the next page we are more interested in the Pistons or something else, are we not?

Mr Epp: Sure, or the Blue Jays or something.

Mr Gunn: I am probably like they are. I just figure we have Peterson and we have Mulroney and these people running the country, so we think you can trust them. I do not know what their obligations are. People went through the last war thinking they had a country and everything. All of a sudden, you are told in Quebec you cannot have an English sign and yet we are told to be bilingual down here and be fair to the people here. The people here have left Quebec and they have chosen our system. I do not care what language they speak. We should all speak any language we want to.

I do not really see any interest in Meech Lake. We are all Canadians, I thought. When I went to British Columbia, I found out there they hated me when I was from Ontario. But after a while, if you kid them along and tell them they have got better apples than we have in Ontario, you can get along with them.

Mr Epp: Of course, a lot of those people out west were from Ontario originally and moved west, so it is somewhat ironic. With regard to Meech Lake, I just wanted to say I think it is very important that it pass, and that is because it brings Quebec into the Constitution. As you know, when the Constitution was signed in 1982, Quebec was not part of that. They constitute about one third of the population of Canada and a large mass geographically. Everybody agrees that it is important we bring them into that Constitution, to bring them to the table where discussions can take place. That is why it is very important that it pass.

Mr Gunn: Yes, but they chose not to at the time.

Mr Epp: You know that they had a separatist government at the time.

Mr Gunn: They chose not to, but then they could come in. They are welcome any time. At the same time, we do not seem to know how to handle our own Constitution. We would be better to beg England to take us back and make us all British again, I think. Then maybe we will grow up and learn how to run the country after a while. But the way we are now, we have done this and people are so confused they do not know who runs things and who is doing things. Even with Quebec, with one third of the votes, why do they have so many extra votes when the rest of the country has to divide six votes, I believe, is it not?

Mr Epp: The Premier has indicated that we are prepared to give up six votes, but Nova Scotia and New Brunswick are each prepared to give up two votes in order to make it more equitable for other provinces.

Mr Gunn: And yet most of the money comes from Ontario for the whole of Canada.

Mr Epp: It comes from Ontario, from BC and from Quebec, for various parts of the provinces, in order to—

Mr Gunn: Mainly Ontario.

Mr Epp: Ontario is the biggest.

Mr Gunn: We are the fairest of all of them.

Mr Epp: Ontario is the biggest province, and the wealthiest, as you know.

Mr Gunn: And we in Ontario have more do-gooders who want to be fair to all the unfortunate people. The other ones do not want to give.

Mr Epp: Mr Gunn, I am not going to try to dominate this. There may be other members of the committee here who wish to ask questions and I am going to give them an opportunity to.

Ms Oddie Munro: You made reference, in passing, to immigration. That was one of the questions raised in the Meech Lake accord, the formula which would allow provinces to actually talk about numbers. Up until that time seven provinces had entered into agreements with the federal government on a number of issues relating to immigration. Quebec opted to look at numbers, but other provinces have that option. I think that was an important question you raised, because a lot of people do not know that. One of the things we are getting at the hearings is how can we better share information so that people can participate. Maybe they would come up with the same conclusions that others have, but you do not have the information.

On Senate reform, part of the ratification of the meeting of first ministers two weeks ago was to take a look at the notion of a commission which would examine Senate reform, and each province would have its own participants. I wonder if you would give me the benefit of your opinion as to who from Ontario you think should be on that commission, which would travel across the province taking a look at—

Mr Gunn: I think the only one I would trust is myself.

Ms Oddie Munro: The only one you would want would be yourself?

Mr Gunn: Sure, I will go and do it.

Ms Oddie Munro: How would you then—

Mr Gunn: I am just making a joke.

Ms Oddie Munro: No, but I think it is interesting. How do you think citizens such as yourself, or maybe legislators, whoever—what kinds of questions would you be asking and what kind of information would you need in order to do a good job? You see, that is what we are hearing back, that you do not have the information.

Mr Gunn: As far as the Senate is concerned, the average Canadian, I think, realizes this is like a payoff job. Mostly it is for good old boys afterwards. I do not know what they do, actually. I am getting too old to remember what I learned in school, but I think the younger kids should come up, the younger people, 40-year-olds or whatever, and learn something about Canada. We have a great country.

I have just come back from a little trip, and you realize how many people respect us for other things. We should be more concerned about this country; our people should be more concerned. But as you get this old, you figure, let them handle it. That is why I am rusty on many things, but I still feel strongly that we have got a great country and it is time we should be free all across the whole country to walk in any place and get a job. I was refused a job in Vancouver because an American fellow was going to take the job. He was a union man and I was not and I had to fight the immigration for that. There is so much ignorance that goes along in our country that you have to go and inform government people of your rights some times. They do not even know.

As for the rulership, as far as Quebec and all this is concerned, I respect Quebec. They are the only people who stand up and have guts to fight issues many times. We do not. We sit back, as I said before, and worry about the baseball or something.

The Chair: Mr Gunn, thank you very much for your presentation. We appreciate your being here this morning.

ROBERT LILES

The Chair: Our next presenter will be Robert Liles. Welcome to the committee. Do you have a statement you would like to make?

Mr Liles: This is rather extemporaneous. I understood there was supposed to be a brief presented and then you would accept statements, but I will see what I can do.

I do have some misgivings about the Meech Lake accord that was signed by the first ministers just recently. The biggest concern is the fragmentation of Canada that could happen with the Meech Lake accord. I believe it is detracting from the federal government and placing a lot of power into the provincial governments. I do not believe that should happen, in the sense that we are trying to have a unified Canada. I do not believe Meech Lake, as it is now, provides for that. I think Premier Peterson indicated that when it was originally signed, three to three and a half years ago—in the interval from that time till now, of course, there have been a lot of changes in Canada—he could recognize a need for changes in the Meech Lake accord, but apparently he went along with it.

1020

One of the committee members here mentioned, about the original signing of Meech Lake three and a half years ago, that Canada had an opportunity to discuss it. But I must not have been in Canada too much, although I have lived here all my life. I was born and brought up here and I am proud to be a Canadian. Nevertheless, there was not the apparent need to understand it; either there was some subterfuge or something of that effect that it was not brought to the Canadian public the way it should have been at that time, the implications of it. Perhaps they were not known as they are now.

Certainly the other indication was that the political party in power in Quebec certainly was a separatist party, and perhaps that is still the problem in Quebec. I know that in the province of Quebec there are a lot of Canadians and people who were in the armed services with me and certainly had grown up in this area of Ontario. I do not like to particularly use the terms "francophone" and "anglophone," because it detracts from the fact that we are Canadians. These people in Quebec, I am sure, if they were given the opportunity, would have a lot of misgivings about Meech Lake as it stands right now too.

I am very disappointed in the stand that Ontario has taken. I certainly give full marks to Premier Wells and also to Premier Filmon for the stand that they have taken, particularly with respect to some of the areas of concern. We know that the aboriginal problems have not been addressed and have been put off. Even Senate reform has not been included in the recent signing; it has been put off until a later time. I just have a lot of misgivings about things that are being put off with respect to Canada. I feel there is certainly a need to take another look at this accord.

I believe the dates are engineered deadlines. I think it is very unfortunate that any group of people should have been put through what they were put through in a pressure-cooker situation. I know that probably if it was the same with me, I would not have known what I was doing or saying at the time.

Immigration is another concern. It has been briefly addressed. My understanding so far—and of course the problem is that I think a lot of people in Canada do not fully understand the Meech Lake accord. It is just recently that they are starting to get some insight into it. But the immigration situation is one

where there seems like there is a special status for immigration in Quebec that is not applicable in Ontario or any of the other provinces of Canada. That is the point system. I think that the point system, the way it is set up, certainly contravenes the Charter of Rights and things of that nature that are supposed to be part of the Constitution of Canada.

I have heard a lot about how Quebec was not included in the Constitution when it was patriated and never has been. Again, it sounds like the problem now is for the dissenters, who are getting the brunt of it, but the original dissenters were the separatist party in Quebec, which was in power. I am sure that if it had been another group of people in power at that time, there might have been a difference in the patriation of the Constitution and we might not have ever needed the Meech Lake accord.

I just wanted to bring these thoughts to the committee here. I think there needs to be more input from the people of Canada in everything. I feel we have to cut out this business of politics. I am not taking a stand whether it is Liberal or Conservative or whoever it might be, NDP or anything like that. I feel we should be looking at it from the standpoint of Canadians and our concern should be for Canada.

I think the way this is being rammed down the people's throats right now—and I am not looking at it for three and a half years, I am looking at the last two weeks—it has almost been a manufactured and engineered deadline. I still have no understanding why 23 June is suddenly the deadline when everything has to come. Perhaps somebody on the committee can tell me that.

The Chair: I am sure somebody will during the questions and answers. Thank you very much for the presentation.

Mr Wildman: Actually, for someone who said that he was ignorant or confused about Meech Lake, you indicated a good deal of understanding. I appreciate your presentation.

With regard to the question about 23 June, under the setup for constitutional amendment it states that three years after the first Legislature ratifies an amendment is the deadline for all of the other legislatures to have ratified. If they have not all ratified by that deadline, then the amendment will not go ahead. Quebec ratified the Meech Lake accord on 23 June 1987. They were the first Legislature to do so. As a result, three years after that is the deadline for the others to do so. That is the reason for it.

You have raised a number of questions with regard to spending power, Senate reform, aboriginal rights and so on. I would just like to ask you one question. The last two weeks that you have talked about, first in Ottawa with what you described as the pressure cooker situation of the meeting of the first ministers behind closed doors and then subsequent pressures to ratify—legally the three provinces that must ratify by 23 June in order for Meech Lake to be fully ratified are New Brunswick, Newfoundland and Manitoba. Manitoba and New Brunswick had not ratified. Newfoundland had, but withdrew the ratification. They have to legally ratify by 23 June or the Meech Lake accord fails.

There is no legal obligation for Ontario to act in a hurry, because this Legislature already ratified the Meech Lake accord in June 1988. Legally there is no requirement for this committee to complete its work in a week, which is what we have been told we must do by the Legislature. I do not know whether that helps you.

Mr Liles: I can appreciate that. It does give me a little bit of insight into the need for ratification. But the first ministers sitting there, I think, could have taken the same stand. There was no obligation. They could have changed their minds, could they not?

1030

Mr Wildman: Newfoundland has demonstrated that a ratification can be withdrawn. That is true.

Mr Liles: That is right. So my concern is our Premier Peterson indicating afterwards that there was a big change from 1987 to 1990 and Canada was changing. He apparently indicated—and I am not talking political parties now—the possibility and the probability of changes in Canada, recognizing that. If he recognized that, as apparently Premier Wells and Premier Filmon did, and even Premier McKenna, why did he not then make a statement and question some of the areas?

Mr Wildman: I cannot answer that. Politically you are not asking the right person that question. Perhaps some of my friends over here could answer that.

I would like to ask you just one question: Do you think it would be useful for the Legislature and for the people of Ontario to have a more lengthy consideration of the add-ons, the additional changes like Senate reform proposals, the questions of aboriginal rights, than the one week that this committee has been given to deal with the issues?

Mr Liles: I certainly do. I believe probably the whole of Canada should have a referendum on this issue because it affects Canada. That is my strong conviction.

Mr Wildman: I appreciate that, but I did not ask you whether we should have a referendum.

Mr Liles: No, but you were asking if there should be more input. I am saying that that is currently the only way we could have an input. Like today now—I am not just too sure how this was all organized and set up, but I just happened to catch a little piece in the paper.

Mr Wildman: It was very rushed.

Mr Liles: It seemed like it was more or less put together rather quickly.

I feel that perhaps more Canadians now are becoming aware of what Meech Lake really does mean. Even myself, I do not think I fully understand all the implications of it, but I have become more aware of it and I think perhaps more Canadians have too. Therefore, they should have more opportunity on something of this serious nature to have some input into it. Whether it is a referendum or whether it goes to the Legislature, whatever it is, there should be something where more Canadians have more say.

I am aware of the parliamentary system, where our representatives are supposed to be representing the constituents, but unfortunately many times this does not happen. Therefore, I think perhaps some of our elected representatives should be listening a little more closely. Certainly in Ontario I think there is a very big majority of people who are not for Meech Lake the way it stands as such now, in their knowledge of it. Therefore, they should be getting more say in it.

Miss Roberts: I just want to make a couple of points. I really appreciate your coming today and spending your time and giving us your wisdom. But remember it was in 1982 that they set down this process of changing the Constitution. That is important. It is enshrined in our Constitution that it is three years. Mr Wildman made it very clear, and I just want to re-em-

phasize that this manufactured date, as you indicated, is enshrined in our Constitution.

One reason why I am here today is that I want to change that process. I want to change our Constitution to deal with what I think is an incorrect way of amendment. Things happen in three years' time. Things change. You have very clear statements by all premiers, I think, indicating that. We cannot say immediately, "We've done it now and two months later we're going to change the Constitution." So we have to look, and I think the important thing about our meetings today is to look at the process. The point I would like to have your comments on is a little more detailed: How can we change that process?

The other point I would like to make is with respect to the Senate. Remember, there are five years to deal with the Senate. There is a process set out on how to deal with the Senate, so there is lots of time for the ordinary person in Canada, the ordinary person in Ontario, the ordinary person in Windsor to look at the Senate, and let's come up with some reform.

It is important that we look at that but know that it is not any manufactured date for 23 June and that there is a long time to look at the Senate. It is not immediate; it is not going to be done with our passing of a resolution now or the passing of resolutions down the road. So we have some chance to have an input in the Senate.

What I want from you is, how can we hear from you? How can we deal with the commission that has been suggested through the final communiqué? What is the proper process to make sure when we move on with the Senate, aboriginal concerns, linguistic concerns, equality, gender concerns, how we move on? We need your wisdom on that today. Could you help us out?

Mr Liles: I do not really know whether I can help you out or not. I do not have that much wisdom.

Miss Roberts: You have just as much as the rest of us around here, let me tell you.

Mr Liles: Perhaps most of these difficulties can be dealt with by a little bit more input from the people.

Miss Roberts: Let me give you a couple of hints. Town hall meetings, is that what you are looking at? Or are you looking at a committee of the Legislature going around or various groups putting forward their ideas? Is that what you are thinking about?

Mr Liles: You have me on the spot. I thought maybe I had you on the spot.

Miss Roberts: We are here for your wisdom, sir. We are here to hear from you.

Mr Liles: I do not know whether I can answer your questions today or not. As I say, I did not make any brief. I was asked if I would like to say something.

One of the things I do believe is that the various commissions that have been set up to go around the country prior to Meech Lake were rather difficult to speak to or to have public input into. For instance, if I wanted to appear before the commission that was set up prior to the Meech Lake signing just in the last few weeks, I had to go to Ottawa or I had to go to Winnipeg or places like that. Even now today, this commission here did not seem to be properly publicized.

I am not knocking this, but unfortunately I think some of these commissions that are going about are not as available perhaps to the general public as they should be, and therefore you are not really getting the input you are looking for. I am sure there are a lot of people who have a lot more wisdom than I do as far as some of these areas you have indicated and who could probably give you a lot better insight than I can.

One of the things as far as Senate reform is concerned—and I appreciate your comments on that, that we have an opportunity—I guess I am just a little hesitant about some of these opportunities that are going to come along later on. I know it is very difficult to have some legal input into the signing of the accord that says we are definitely going to have that. I do not think it was put in there that we would definitely have Senate reform addressed.

I do not know whether it is my concern about politicians or what it is, that they are getting a really black name in the country today, but I think there needs to be some confidence restored in the general public as far as what our representatives are really trying to do. The only way that can be done is for more hearings to be available to the general public and publicized sufficiently so that they can be available.

When we came, there were only the two of us to begin with. We understood it was beginning at 9 o'clock, because that is the way it was set up in the newspaper. Even at that, it was tucked away in a little corner of the newspaper. That was my first inkling that there was such a situation going to be set up here today. I took time. I felt that I wanted to be here because I had some concerns. I do not know whether I have addressed them or whether I have helped you or not.

Miss Roberts: I appreciate your comments, sir. Thank you very much.

The Chair: Thank you very much, Mr Liles. I assure you that your comments did help and we will take them under consideration. Thanks for appearing this morning.

1040

MICHAEL LANNAN

The Chair: Our next presenter is Michael Lannan. Welcome to the committee. You have a presentation to make, and we hope you will allow some time for questions.

Mr Lannan: I would like to thank the members of the committee for the opportunity to present my views on the Meech Lake constitutional accord. I apologize for not having a copy of my brief available for you, but I only found out yesterday afternoon that I would be making a presentation.

I have three areas of concern that I will address this morning. They can be broken down into (1) the "distinct society" clause, (2) the legal opinions and communiqués that followed last week's first ministers' meetings and (3) the committee system presently in place.

It is my opinion that the "distinct society" clause will lead to greater restrictions of freedom being placed on the non-French minority in the province of Quebec. The "distinct society" clause should have been placed in the preamble to the Constitution, where it would have recognized Quebec's unique situation but would have remained constitutionally harmless. Because it is placed in the body of the Constitution, it is now an interpretative clause.

Interpretative clauses are very powerful because they determine the parameters that will be used by the courts in determining how far governments can go in quashing our constitutionally guaranteed rights and freedoms. Quebec, by virtue of the "distinct society" clause, will no longer have a

need for section 33 of the charter, the "notwithstanding" clause. This has been publicly discussed by various politicians and legal experts, again with no clear consensus being arrived at.

Through the implementation of Bill 101 and, most recently, Bill 178, Quebec has demonstrated how far it is prepared to go in restricting the rights and freedoms of minorities in that province. The major problem with the clause is that no one really knows exactly how Quebec will utilize it or how powerful it is. The Prime Minister was telling Quebec one version and the rest of Canada another.

Obviously, if it meant nothing more than a recognition of the realities of Quebec, Premier Bourassa would not have gone to the lengths he did to preserve it. Is being recognized by a toothless clause really worth the risk of separating over?

It is evident from all the actions of the parties concerned that Premier Bourassa knows it is more than this. Again, while assurances are given by Quebec that it will not be used in a restrictive manner, recent history tends to suggest otherwise.

It is my opinion that the Meech Lake constitutional accord gives great power to Quebec to further pursue its separatist inclinations. This accord will foster the expansion of sovereignty for Quebec rather than retard it, as suggested by the Prime Minister and others.

The "distinct society" clause will go further than section 33 in many ways. In grey areas of jurisdiction not specifically mentioned in section 91 or section 92 of the BNA Act, the "distinct society" clause will be used to garner control over new areas that are always emerging. As opposed to section 33, the "distinct society" clause will be proactive and not reactive.

The clause could affect and ultimately restrict other areas of the Constitution, more than just section 2 and sections 7 to 15. Ultimately, the "distinct society" clause will lead to a sovereign Quebec and the breakup of Canada. Hopefully, this will not occur, but based on history and the potential of the clause, the possibility exists.

My second concern is with the legal opinions and communiqués from last week's first ministers' meeting. The legal opinion on the "distinct society" clause presented to the Prime Minister on 9 June 1990 by Professors Hogg, Cameron and others is ambiguous at best and inconclusive at worst. Basically, that group of experts is saying that the charter will be interpreted in a manner consistent with the "distinct society" clause, but that section 1 will still be the final stop for any constitutional challenge, with the Oakes test then being utilized.

The experts do agree on the second to last line of the opinion that the "distinct society" clause may be considered in determining whether a particular law fits within the legislative authority of Parliament or any of the other legislatures. Again, this is the grey area that I have spoken about. The experts agree with me that it could be used in that manner.

One must consider legal opinions with a grain of salt, regardless of who prepares them. Legal opinions are just that—opinions. They are not cast in stone and are subject to change. The charter is a living tree, and the complexion of the bench changes as new judges are added. To suggest this opinion is binding or even overly helpful is ridiculous. Until the Supreme Court has the facts of a case before it, no one, not even the experts, can accurately predict how it will be decided.

Mr Mulroney said in his speech at the conclusion of the first ministers' conference, "With the passage of the Meech Lake accord, Quebec has achieved the requisite security for its cultural and linguistic distinctiveness." Obviously, he recognizes the enormous power that the "distinct society" clause will give Quebec. Unfortunately, Ontario did not.

It was stated last week by a member of this committee that in the 1988 Supreme Court case of Regina and Ford, the court said that the "distinct society" clause would not have altered the court's decision. This is absolutely false. Nowhere in that decision is the Meech Lake accord even mentioned.

The Supreme Court of Canada does not speculate on matters that are before various legislative bodies unless asked to do so through a reference process. To suggest that this case would have been decided the same had the Meech Lake accord been in place is irresponsible and further adds to the misinformation being spewed forth by various political bodies.

In Regina and Ford the court states, "Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is a means by which a people may express its cultural identity." Language is being, they cannot be separated. I shudder to think how much more persecution minorities will have to bear because of Meech Lake.

The entire Meech Lake debate has been pitted as one of Canada versus Quebec, that Quebec had to be brought into the constitutional family again at virtually any cost. Those that were against Meech Lake were portrayed as French haters or racists. Only those who supported Meech Lake were true Canadians. This politically stimulated portrayal has lead to much bitterness and deeper divisions regardless of what happens with Meech Lake now in Manitoba and Newfoundland.

Premier Peterson was a willing proponent of this smear campaign and will have to deal with its results. While small Ontario towns were being publicly chastised for declaring themselves English only, the French-language surveillance commission continued to persecute small businesses in Quebec that dared use English on the storefronts. The mistrust and pain experienced by this double standard will not easily be healed.

To suggest that Meech Lake now brings Quebec into the Canadian constitutional family is ludicrous. Quebec was legally and politically always a part of the constitutional family regardless of semantics to the contrary. The fact that they felt that way in the first place, though, is the best indicator that Meech Lake will not satisfy their desires fully. Their concerns go much further than that.

The other concern I have is with the giveaway of Senate seats by Premier Peterson. While this may have inspired the other provinces to move more quickly on Meech Lake, it certainly did not inspire any compromises or concessions by those other provinces. If a suitable formula and agreement cannot be worked out for the Senate reform by 1 July 1995, then Ontario will lose six Senate seats, dropping to 18, while Quebec remains at 24 and the other provinces increase in various degrees. While Ontario represents 36.4% of the country's population, we will then only have 17% of the representatives in the Senate. As Quebec's population decreases, it is our Senate seats that are lost. I hope there will be further public discussion on this matter before the 1 July 1995 deadline.

My final area of concern with the Meech Lake accord is the process in which it was implemented. Surely a constitutional accord of such magnitude deserved better. Again, though, as with many other important decisions, political secrecy ruled the day. Deadlines, threats and the like are no way to entrench a constitution. Public hearings, before the fact and not after, as is done in some other provinces, should have been implemented more fully in the province of Ontario.

Three hours of hearings in a city of 200,000 people just does not seem adequate. Fortunately, it really was not publicized, so I am sure you will be able to accommodate all those who were able to find out about the hearing. The one ad

that was in the Windsor Star, a small one at that, had a telephone number on it that was the clerk's number. Unfortunately, there was no area code given and, as it turns out, it was a Toronto phone line. I do not know if that is an indication of the respect that perhaps Windsor gets from politicians working out of Queen's Park or just a flaw in the system itself. None the less, it restricted people from getting access to today's meeting.

It is exactly this kind of secrecy and poor treatment that leads one to a basic distrust of elected officials. As was stated last week by a committee member, the committee is an after-the-fact, fact-finding mission with little that will be accomplished from it. Hopefully, when you do report back to the House you will tell the members, and the Premier in particular, that the process must be changed, that the process must become more open and public, closer to the democratic principles that this great nation was founded on. Arbitrary deadlines should not be imposed. Time should be taken to ensure that all regions of Canada are satisfied with any constitutional amendments that might be entrenched.

Hopefully, it is not too late for Meech Lake to be stopped. Then we can work on a new and more equitable solution that will satisfy Quebec, Ontario, Newfoundland and all the other provinces, free of political deadlines. This is the greatest country on earth. We must work for its survival and then flourish in the world market. Unfortunately, Meech Lake is not the answer. Thank you.

1050

Mr Polsinelli: Mr Lannan, thank you for your presentation this morning. To start off with, I think there is a general consensus among the committee members that we agree with you. The process that was used in terms of arriving at both the Meech Lake agreement and this companion resolution leaves something to be desired. Something should be done to open it up and make it more accessible to ordinary Canadians and, as a matter of fact, to ordinary members of the Legislature for that matter.

That having been said, however, I wanted to ask a couple of questions with respect to your position on the Meech Lake accord. You, of course, realize that the Meech Lake agreement has been ratified by the Ontario Legislature, so your objections to that whole accord, in a certain sense, are not at issue here because that has been ratified by the Ontario Legislature. What we are dealing with today is the companion resolution that was entered into by the first ministers on 9 June.

In that regard, I wanted to ask you a question. A great portion of your presentation was dealing with the "distinct society" clause. You talked about how the "distinct society" clause should have been part of the preamble rather than the body of the document, and having been part of the body of the document, you indicate that it becomes an interpretative clause that sits alongside the other interpretative clauses.

You indicated also that a number of experts support that point of view. I would ask you if you could indicate to me the names of those experts because what we have before us is a legal opinion by six of the more distinguished constitutional experts in the country who reject that position. Would you comment on that, please?

Mr Lannan: Basically, the part of my brief in which I mention that was just that. The second-last line by those experts that presented the letter of opinion to the Prime Minister stated very clearly that the distinct society will be used to interpret those grey areas of jurisdiction. New things come up in the country, things in the past, air traffic and cable television and things like that. Now, because that "distinct society" clause is part of the body of the Constitution, it will be used to delegate power through section 91 and section 92.

I am not arguing with the experts' opinions and I am very familiar with their opinions and them. What I am trying to state is that six expert opinions are not cast in stone. They are simply opinions, and until the Supreme Court of Canada gets a body of facts in front of it and a case to decide, the opinions are worthless.

Mr Polsinelli: There is no question that an opinion in an opinion. It all depends on who that opinion is coming from. We had the privilege of having Peter Hogg, who is perhaps the leading constitutional expert in the country, before us, and he was one of the signatories of that opinion.

He indicated that, in his opinion and in the opinion of the other signatories, the "distinct society" clause moderated section 1 of the Constitution, which determines what is reasonable, what is fair in a reasonable and democratic society. In effect, the "distinct society" clause had the same impact as having been in the preamble of the Constitution. But that having been said, obviously you have a different point of view.

Quickly, on the question of the giveaway of Senate seats—

Mr Lannan: Could I make a comment on your last comment? Just with regard to the preamble, it has already been shown in a case, Zybleberg in Sault Ste Marie, the religion issue, that where the preamble stated—I forget exactly how it reads—that we are a country founded on the principles of God and justice, that just because that is stated in the preamble it had no authority at all and it was disregarded in determining the issue of prayer in the classroom. I disagree that if it was in the preamble it would have more weight.

Mr Polsinelli: We could enter into a discussion of how the Constitution of Canada works, but I would rather not do that at this point.

Mr Lannan: Well, I guess that is part of the whole problem with the situation. It is unfortunate that none of the politicians—I do not want to tie up your whole day, but I am just concerned that that is sort of what is at issue.

Mr Polsinelli: Very quickly, in terms of dealing with the Charter of Rights and Freedoms, I think it is accepted fact that the rights are not absolute rights that Canadians have. Those rights are moderated by section 1 of the Constitution, which determines what is reasonable in a free and democratic society. We have those rights given to us under the Charter of Rights and Freedoms subject to what is reasonable in a free and democratic society, which is section 1 of the Constitution. The court has to weigh the absolute rights against what is reasonable in a free and democratic society.

What Professor Hogg has indicated is that the "distinct society" clause will moderate what is reasonable in a free and democratic society and not impact on the charter. I said I do not want to enter into that discussion. I just wanted to bring that point of view forward, which I think is a commonly, universally accepted point of view as to how the Constitution works.

I wanted to ask you about the giveaway—

The Chair: Mr Polsinelli, perhaps you will let the witness comment on your statement and then we will call it a day.

Mr Polsinelli: I wanted to ask about the giveaway of Senate seats.

The Chair: You will get a chance to do that.

Mr Lannan: I agree partially with what you are saying, but again it is a federal Constitution and Charter of Rights and yes, they are limited through section 1 and through section 7. This particular clause is distinct to citizens of Quebec and so they will have enhanced rights, or the government will be able to restrict those rights more than any other province will be able to restrict the rights of its citizens. So in a sense it is not a universal right and freedom; it is specific to Quebec and specific to the rest of Canada.

The Chair: So you disagree.

Mr Polsinelli: No. I agree that if there are any limitations of their rights, it would be only in the province of Quebec and not in the other provinces. I think that is also clear.

Very quickly, on the Senate seats, Mr Chairman, because I did want to do that before I turned to constitutional debate: Mr Lannan, do you have any particular respect for the Senate as it exists today? Do you think that it has any moral, legal, equitable authority?

Mr Lannan: The way the Senate is run today, I think there is no clear direction that the Senate has been given.

Mr Polsinelli: Do you have any respect for it?

Mr Lannan: Sure, I have respect for the Canadian Senate. It is a house of Parliament. It is a chamber of sober second thought. I have great respect for the Senate.

Mr Wildman: A bunch of old Tory and Liberal bagmen.

Mr Lannan: I guess we have the Senate for the Liberals and the PCs and subsidized housing for the NDP. It all works out in the end.

The Chair: Order, please. Can we keep those comments separate and apart, out of this debate.

Mr Polsinelli: On that note, I think we should stop.

The Chair: Order, please.

Mr Polsinelli: No. I am just kidding.

Mr Lannan: I just wanted to make one quick comment on the Senate. Yes, I have respect for it and I think it should be modified and reformed before Senate seats are discussed. We do not even have the role that the Senate will play, yet we are deciding on how many members will play a part in it.

I think, first of all, we have to give them a clear mandate, decide what we want the Senate to be, whether we want it to be a rusting place for old bagmen or we want to it to be clearly a house of second thought. If we want that, then we can start working on reform and designating specific numbers and making it more equitable, if that is what is intended.

With this companion resolution, we are putting the cart before the horse. We are trying to satisfy people when we do not even know what we want from the institution itself, and I think that is wrong.

The Chair: One final question, Mr Polsinelli.

Mr Polsinelli: Mr Chairman, I will pass. I do not think I could do it justice.

Mrs Cunningham: Thanks for being here today. I am here because I am concerned about process and I have been from the very beginning. There were public hearings in Ontario, as you are aware, which concluded, I think, in March or April 1988. The recommendations went to the House in June 1988. I guess my great disappointment was that we had recommendations that the Legislature approved of and certainly we had dissenting views on that. I felt that perhaps we could have taken it further and gone back to the public.

During those hearings, there were three or four recommendations that came before the committee on numbers of occasions by members of the public about this plea for public hearings, nationally and provincially, and with great respect, the Legislative Assembly of Ontario has a standing committee that takes a look at constitutional reform.

I wonder whether you have any words of wisdom with regard not only to this companion that we are looking at today, the 3 June document. Did you have a chance to look at that, by the way?

Mr Lannan: Yes, I have.

Mrs Cunningham: I wonder whether you have some advice about the big picture, what do we do in the future, because sooner or later this cycle has to change. It has been going on far too long.

I think we in Ontario have an opportunity to set an example of what we want with regard to constitutional hearings, not only in our own province but to recommend to the government of Canada—which we tried to do, not in specific recommendations, but they are stated in the report—about a process for Canadians to have input.

I wonder whether you could speak to the larger picture, but more specifically to what we do now. I do not see a need for a rush around this document. We have to go back and report to the House as a committee and we are looking for your input around what we say.

1100

Personally, I am not prepared to support the time frame that we have been given. The six Senate seats are one of the problems, but we also have a wonderful opportunity to speak to the aboriginal hearings. I think they have been delineated in this document and there is a time frame for them.

I think it is a good document, but certainly the public of Ontario has no idea what is in this. You would be one in a million, and I can say that quite clearly, so if you would comment on both parts of the process.

Mr Lannan: I agree with many of the things that you suggest. If the American Constitution is any example, we are in for probably a great number of changes over the next few years until our charter is worked out.

I think the process itself has to be changed in the sense that two things occur. First of all, there is not enough information being given beforehand, so that even when there is a public inquiry, you are talking to people with views very similar to the people who are on the committee. You are talking to other politicians, you are talking to the legal profession, you are talking to academia and people like that, and ordinary Canadians are not getting their views out.

I think if the money that was spent on the goods and services tax advertising was spent on Meech Lake or free trade, people would have a much better idea of what goes on in this country. I think there should be a table set up for constitutional accords. I do not think that it should be based on the political agenda of each province. I think it should be something that is a regularly tabled committee. From the companion resolution there is going to be something like that, but I think the public

part of it has to be opened up and the committees have to make themselves more available.

Yes, you get around to all the cities, and I recognize that running a province the size of Ontario is very difficult and adding constitutional changes to that process is even harder, but I think that other committees have to be structured. I think there has to be more involvement with the local groups in different cities and areas to get their input.

I think all time deadlines do, especially when they are set arbitrarily, is to create a win-win situation for the politicians. They can come away from the table at the 11th hour with a workable agreement that generally probably is not best for the province or the country. But because of this arbitrary deadline they were up against, it becomes the adversary and they become the winners because they snuck something through the time.

I think those deadlines have to be eliminated. Certainly you have to work within a structure, but having a first ministers' conference two weeks before the end of a major constitutional agreement expires is ridiculous. It put far too much pressure on the premiers and far too much pressure on the Prime Minister and Canadians themselves because Canadians do not understand much of what goes on in this agreement.

I think that is part of the problem as well. There has to be an education program. Perception is reality. People do not know what is in the accord. They hear certain things from committees, from politicians and from the press and they are confused. I think the two areas are the education that has to be enhanced and certainly the process that has to be lengthened.

Mrs Cunningham: The example then would have been, if we had been looking at this document a year ago, that there would have been time for the kinds of public hearings that I think most Canadians want.

Mr Lannan: Absolutely. I think with the 1 July 1995 deadline for Senate, my worst nightmare is that here we will be, on 28 June or 29 June 1995, talking about Senate reform when it should be started almost immediately so that that will not be a problem then.

Mrs Cunningham: I guess the other concern I would like you to remark on is with regard to the six Senate seats. It is rather binding for us. We do not go in there with an open deck, if we in fact are going to give consent to this document. That is my great concern.

You obviously have a legal background or a background that is certainly one that you know quite a bit about this constitutional stuff. What would be your recommendation to the committee around the time frame or what position we take to the Legislative Assembly as a result of our hearings, at least from your point of view?

Mr Lannan: I would suggest open hearings. It seems clear that the Premier is prepared to consent to those six seats being given away, so to speak, or redistributed. I think that is wrong. I think Ontario is the largest and most productive province in the country and that we should act as leaders. It is one thing to be conciliatory and one to just clearly give things away. Just giving things away and making yourself open to different options is not always in the best interests of the country.

I think I would like the committee to go back and tell the Premier that this should be reconsidered. The Senate, first of all, should be considered in terms of the reference and the mandate that it is going to have, and then the seats can be decided on.

The seats are incidental. Sure, it is just a political accommodation. It satisfies those other provinces, because now they have more control and big Ontario has less control. But again, we have not solved anything with the Senate. It is still a resting place and it is still perceived by most Canadians to be that, just a simple payoff for politicians of all three parties. Hopefully we will talk about what the Senate should be and then worry about the seats, but again, hopefully that will be done before 1995.

Mr Wildman: Since you quoted me earlier, I thought I should raise a question. I am intrigued by your view about deadlines. Even the American Constitution which you pointed to has deadlines for ratification of amendments. Are you suggesting there should not be deadlines?

Mr Lannan: I am suggesting that the deadline should be such that we do not wait till the last minute to satisfy it.

Mr Wildman: It does not really matter when the deadline is; the question is waiting. So Mulroney is the problem, not the deadline.

Mr Lannan: I guess all provinces are the problem and all politicians are the problem. We have to have deadlines. You cannot say that this will be left up in the air and whenever the heck Newfoundland and Ontario and British Columbia get around to ratifying it, fine. We have to have deadlines. But we have to start the process and structure the process so that it is not a last-minute situation.

Mr Wildman: I agree. Mr Mulroney made a decision to leave it intentionally to the last minute. That is why I said he is the problem. When you say all the provinces and all politicians are the problem, I do not quite understand. It seems to me that the three so-called dissenting provinces were, in fact, dissenting. They did not want to ratify, so why should they?

Mr Lannan: They should not.

Mr Wildman: Exactly. And so the deadline passes.

Mr Lannan: They should not, but when transfer payments and God knows what else in a closed political session are tossed before them, obviously moods change. Obviously there has been pressure put on people. If it is a province like Prince Edward Island or Newfoundland that is dependent on transfer payments, etc., the Prime Minister has an awful lot of power to change your views on certain things and the accommodating process takes place. The aboriginal people and others were left out because they do not have the political power that the other minorities—French—have.

As for the Prime Minister, yes, it is primarily his responsibility and his fault. From his communiqué, it looks like he is going to try and mend his ways. He suggests himself that the process was wrong and that a more lengthy time will be allowed for the next one. But again, you have to take that with a grain of salt.

Mr Wildman: My concern is not with deadlines or even with Mr Mulroney's tactical decision to leave it to the last minute but with the fact that we are indeed dealing with this, as you quoted me as saying, after the fact. We are dealing with this now after the fact. The way the whole system is set up, we will always be dealing with it after the fact.

Mr Lannan: We do not have to be. You could present a private member's bill to have it brought to the House before that time. We are aware of the Senate problem now; we are

aware of the resolution. Certainly talks can begin now. Any party could initiate that.

Mr Wildman: On the question of the Senate, it is again after the fact that the decision has been made by the first ministers to initiate a commission that will look at the question of Senate reform on the basis of three rather vaguely outlined objectives over the next five years. They have some deadlines by which they are supposed to report to the first ministers, but again it is going to come back to the first ministers' conference. The first ministers will accept or reject or change what is proposed by a commission, and then we as a committee or whoever as a committee of the Legislature will again, after the fact, be going around asking people whether they agree with the final decision. That is my concern. In terms of Meech itself, would you not agree that because of the errors of all of the first ministers and the lack of commitment on the part of the first ministers to aboriginal rights, Meech is essentially dead, so it is really rather an academic discussion right now anyway?

1110

Mr Lannan: As Premier Filmon and others have suggested, until 23 June I do not think you can count anything out. I can sympathize with your concern that it is an after-the-fact situation that is going to occur. I guess in any government that has a majority situation, the leaders have the privilege of speaking on behalf of the whole Legislature and they can make decisions like that behind closed doors.

Mr Wildman: That is the point. We do not need to have this kind of process. Decisions of whether they are majority or minority governments do not have to be made on the Constitution on the basis of first ministers' conferences, or what is called executive federalism. In fact, we could be moving to approaches such as constituent assemblies or whatever. There are other ways of doing it.

The Chair: On that note, Mr Lannan, I would like to thank you very much for your presentation today. Just as an aside, I think you ought to know that this committee, last December, was mandated to commence consultations with the public of Ontario on Senate reform. We were not given the specific loss of six seats, but we were looking at Senate reform, and that process is under way already. Thank you very much for appearing this morning.

ROLAND TRÉPANIER

The Chair: Our next presenter will be Roland Trépanier. I understand he is representing Students for the Reform of Meech Lake. Mr Trépanier, come forward please. Monsieur Trépanier, est-ce que vous allez parler en français ou en anglais ?

M. Trépanier : Oui, c'est ça.

M. le Président : En français ?

M. Trépanier : En français, oui.

The Chair: Mr Trépanier will be giving his presentation in French. There have been, whatever they call these things, translators available if you tune into channel 1.

Interjection.

The Chair: It is a receiver, thank you.

Monsieur Trépanier, on alloue 20 minutes pour votre présentation. Si vous voulez laisser du temps pour des questions, s'il vous plaît. Commencez quand vous êtes prêt.

M. Trépanier : Premièrement, j'aimerais, au nom du groupe des Élèves pour la réforme de l'entente du Lac Meech vous remercier sincèrement de m'avoir offert l'occasion de présenter mes perspectives sur cet accord qui est très important au Canada.

Avant de procéder plus loin, j'aimerais souligner que je me présente devant vous aujourd'hui en tant qu'un jeune Canadien qui est fier de l'être, mais je suis un Canadien qui, simplement par hasard, demeure dans la province de l'Ontario. Présentement, je suis très inquiet concernant l'état national de mon pays basé sur ce que j'ai lu et sur ce dont on a tous été témoins dans les médias récemment. Par exemple, on voit des gens qui piétinent le drapeau du Québec, des gens qui brûlent le drapeau canadien dans les rues. Partout on voit ça à la télévision.

Alors, les Canadiens de toutes les races et cultures ont travaillé main dans la main pour au-delà de 120 années pour créer un pays tolérant et juste. Nous nous sommes accoutumés plus ou moins à un processus résolutoire qui démontre de la compassion et du respect envers l'un et l'autre. Présentement, le dilemme qui est centré autour de la question du rôle et du statut de la province de Québec dans la Confédération ne devrait pas être exclu de ce procès traditionnel.

Après plusieurs mois d'angoisse, de frustrations, d'embarras et de haine publique entre les groupes linguistiques du pays, les Canadiens et moi-même sommes complètement désolés. Si nous basons notre perspective sur la tradition historique, nous savons tous que le Canada doit faire plus, plus pour amorcer ce pays et plus pour apaiser les tensions qui existent aujourd'hui.

L'entente résolutoire qui fut signée par les premiers ministres provinciaux il y a déjà deux semaines et qui sert à accompagner l'accord du Lac Meech ne suffira point à répondre aux maints défauts de Meech ni aux interprétations diverses.

En premier lieu, les intérêts des indigènes — et on voit ça surtout maintenant au Manitoba — des minorités francophones hors du Québec et même des autres minorités culturelles non pas encore été résolus. Le Canada est plus qu'un pays bilingue qui est composé simplement de francophones et d'anglophones. La gamme des cultures est plus vaste et très étendue. Nous sommes un pays multicolore et multiculturel. Il faudra que nous participions ouvertement à l'accroissement du Canada. En plus, nous devrons partager nos droits également. Ces questions doivent encore être adressées par le gouvernement de l'Ontario auprès du gouvernement fédéral. On ne peut plus oublier ces questions fondamentales en les jetant hors de la fenêtre.

Il n'y a pas de doute que la formalisation de l'accord a été un processus à huis clos. Plusieurs groupes de Canadiens ont été barrés d'y participer, effectivement. Même aus étapes initiales des débats sur cet accord, il me semble que le système fut totalement éloigné des Canadiens en général. Le premier ministre, M. Mulroney, a même constaté très tôt que :

«Nous n'allons pas réouvrir tout, et le premier ministre du Québec est complètement d'accord sur ce point. À moins que nous sentions qu'il n'y ait pas une chance raisonnable afin que tous les côtés puissent mener les négociations à une fin, nous n'allons pas réouvrir ce débat constitutionnel.»

Il a constaté cela dans la Chambre des communes le 1er octobre 1987. Cette déclaration du premier ministre indique que l'accord fut construit comme un véritable fait accompli. Alors, nous devons maintenant souligner des questions politiques et philosophiques moyennant le rôle légitime des Assemblées législatives ainsi que notre Parlement fédéral. Qu'arrivera-t-il au rôle de l'Assemblée législative de l'Ontario ? Qu'arrivera-t-

il au rôle du Parlement et surtout, qu'arrivera-t-il à la voix du peuple ?

Le déroulement de la ratification de Lac Meech va solidement retrancher les conférences des premiers ministres par précédence et à travers les provisions 50 et 48 de l'entente. Le fait de n'avoir que onze hommes inclus dans ce processus exige un renouvellement de notre système. Les Canadiens ont témoigné que leurs premiers ministres se renfermaient dans une petite chambre d'étoiles, pour finalement ressortir de la noirceur et pour imposer leur volonté sur le peuple. Ce système de décision n'est plus acceptable en Ontario ni ailleurs au Canada.

En outre, il y a encore des divisions politiques au sujet de l'interprétation de la clause de la société distincte. Le premier ministre du Québec, M. Bourassa, interprète cette clause d'une manière qui est totalement différente des autres premiers ministres. D'une part, son refus d'accepter des changements à l'article 2 de l'accord démontre clairement qu'il interprète cette clause en tant qu'un appareil mécanique qui diviserait la constitution canadienne, c'est-à-dire, l'une pour la société distincte du Québec et l'autre pour le reste du pays. Donc, le fédéralisme est en dépit et va sans doute évoluer d'une façon très asymétrique.

La preuve de son interprétation fut démontrée après le temps que la Cour suprême a rendu sa décision moyennant la Loi 101 le 15 décembre 1988. M. Bourassa a constaté que, si l'accord du Lac Meech avait été en place lorsque la Cour aurait rendu sa décision, l'exécution de la clause «nonobstant» n'aurait pas été nécessaire. Selon lui, la clause de la société distincte aurait outrepassée le «nonobstant» de la Charte des droits et libertés de la personne. Tout de même, les politiciens qui sont impliqués dans la formalisation de l'accord veulent peindre un tableau complètement différent.

De plus, le gouvernement québécois a maintenu depuis 1982 que la province fut exclue de la constitution du Canada, mais notez qu'ils se sont servis du «nonobstant» assez ouvertement et assez facilement.

D'ailleurs, l'opinion légale qui s'est attachée à la résolution qui accompagne le Lac Meech a causé de nouvelles divisions. Certains juristes constitutionnels ont applaudi le fait que la clause de la société distincte n'aurait peut-être pas de force constitutionnelle. Par contre, les premiers ministres n'ont pas encore appuyé cet avis.

M. le Président : Excusez, Monsieur Trépanier, vous parlez très vite. Si vous voulez, juste un peu plus lentement s'il vous plaît parce que c'est traduit et ça prend du temps.

M. Trépanier : Je comprends, alors, plus lentement. Il n'y a pas de doute que l'effort des ministres n'a pas résolu notre dilemme. La formalisation de Lac Meech a déjà retranché un processus secret et bizarre.

Si notre système démocratique ne peut plus fonctionner efficacement pour résoudre les obstacles de l'avenir, ses chances de survie seront très minimes.

Si vous me permettez, j'aimerais peut-être faire une analogie entre ce processus et un match de hockey. Je dirais que le premier ministre du Canada jouait tout le temps le rôle du centre ; que l'Ontario et le Québec étaient respectivement les ailiers droit et gauche ; et que les autres provinces jouaient le rôle des défenseurs et des gardiens de but, sur les deux équipes. Les Canadiens n'étaient que des spectateurs assis au banc, enfermés derrière la vitre. Encore, la rondelle ne fut jamais lancée dans les bancs.

Chers membres honorables, ce processus doit changer une fois pour toutes. Nous ne pouvons plus accepter d'avoir onze personnes, onze individus qui décident le futur de notre pays. Notre pays, le Canada, ça appartient à tout le monde assis dans cette pièce : à moi, à vous, à tout le monde.

Nous avons le droit et nous avons le devoir d'assurer que ce processus ne se produise plus jamais dans l'avenir. Je suis très fier d'être Canadien français et je veux certainement que le Québec reste avec nous dans le Canada mais il y a trop d'interprétations diverses. On voit que le premier ministre du Québec a une interprétation qui contraste beaucoup avec celle des autres premiers ministres. Il faut s'assurer que ce processus ne se passe plus dans le Canada.

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M. le Président : Merci beaucoup, Monsieur Trépanier. Il y a des questions. Premièrement, M^me^ Munro.

Ms Oddie Munro: I am certainly encouraged by the fact that you have taken the time to turn up at the hearings in Windsor. I think earlier on you heard yourself some of the people who appeared here asking: "How do we involve youth? How can we, how can you as a government, how can you as parties of the Legislature ensure that everyone is involved in the process?" So I thought I would say thank you very much and I hope you continue always to act as a role model for other students and continue, as you get older, to take part in it.

I agree with you that it has been very draining and emotional to see people stamping on the flag of the province of Quebec or the Canadian flag, but we have also seen that there are other caring citizens who have taken it on themselves, as a delegation, to go to Quebec and apologize. Also, going back into history—I am watching the 1982 Constitution come in—there are some interpreters of history who would say that Lévesque in fact found that he had been betrayed at the last moment. Therefore, one wonders whether there were other ways of getting Quebec into the Constitution at that point. In any event, we then had what some people were calling a Quebec round. Certainly a "distinct society" clause is a very important part of that, but other important amendments were on finance, immigration, so I think it is true to say that was also a Canadian round.

You know, when you take a look at your problems with decision-making and the closed door and the secrecy, I am getting the impression that people—this is the first time that many people have gotten involved in the process—but I guess, being an elected politician, my concern is, what kind of information do you want out there so that you will always be part of the process? I mean, we have a Ministry of Intergovernmental Affairs. Maybe the information coming out of this province should be made available without politicians, but just through that area. I think you have a responsibility too to be part of that process all the time, not just when it is—do you understand what I am saying?

Mr Trépanier: I agree.

Ms Oddie Munro: I guess, as a committee, we are all saying we are on the committee to make sure that it does not come out with a secret report but with something reflecting what you are saying.

Mr Trépanier: I agree that each and every one of us has a duty to ensure that our country unfolds in a very mature way. I hold that duty close to heart. I believe that the process, obviously, as I said, has to be changed. I think the way we could go

about that is obviously to start early on, start more in advance, because we are discussing the most basic, fundamental questions of our country. We need more time than just from here to this coming Saturday. That is a kind of pressuring.

I would also think that we should have a vote in every province and that this vote should be the responsibility of each provincial government. That could test the mood in each respective province. That vote would then be taken to the federal officials in Ottawa and then obviously they would have to act upon those results, being that they are legitimate and are the voice of the people. I believe that is the way to proceed, having a vote in each province, having more local conventions, local assemblies.

Nous savons tous que c'était en 1865, à peu près, ou en 1864 ?

[Interruption]

M. Trépanier : Non, je parle de la conférence à Charlottetown, c'était en 1864 ? C'est ça. C'était une conférence qui engageait le peuple directement et ouvertement. On devrait peut-être avoir une conférence nationale encore demain ; ça c'est passé en 1864. Avec la technologie moderne que nous avons maintenant, nous pourrions peut-être faire ça encore, il n'y a pas de doute. On devrait avoir une conférence nationale qui engage tout le monde, qui pourrait peut-être se passer dans une demi-douzaine de villes partout au pays.

Ms Oddie Munro: I just wanted to recognize too that you have obviously picked up that I cannot speak French, and I really appreciate the fact that you spoke to me in the language that I was able to speak to you in. I am glad I also have a translator. There are many reasons that I appreciate your being here today.

Mrs Cunningham: Thank you for being here today. I think the majority of your remarks were around process. You should know that during the public hearings in Ontario there were four observations that were underlined as part of the report as a result of listening to the people. The first was that there should be a national committee to, first of all, canvass the country with regard to concerns about the Constitution and, second, to hold hearings with regard to preliminary agreements.

In my opinion, this is a preliminary agreement, and if the meetings had been held or if this had been made public a year ago and not at the last minute, we would have been able to reach the concerns of the public of Ontario where people very specifically told us what they wanted. That was their first point. Their second point was that there should be a provincial standing committee on constitutional reform—and you have it right here before you—and that this committee ought to be ongoing and should in fact be discussing the concerns of Ontarians.

You heard the Chair mention that there are ongoing discussions around Senate reform, and of course it was to my great dismay that I then saw, without the input of the public of Ontario, that the Premier in fact did make changes. So you are seeing already that we have heard about process. I think the great challenge to provincial and federal politicians would be to follow the recommendations that the public brings to them in the first place.

The third point that was made is that whenever there is agreement by the first ministers, there ought to be national referenda, even within each Legislative Assembly; votes in the Legislature or national referenda. I am not saying that we all follow this, but these were the recommendations. Perhaps that would be something that Ontario could talk about and take more strongly to the first ministers.

The fourth one was an interesting point that was made during the hearings that were specifically written up, that if we indeed are interested in listening to the public, there will have to be some recognition by funding of some of the interest groups, because all of you know, taking the time to be here, trying to get to the hearings, that there is time away from work and there is money that goes into getting the information that you need.

So I am not here to say that we have not had input from the public; we have. I think our great responsibility as politicians is to follow the input. Right now we are stuck in a position of not being able to listen and follow the advice of the public that we asked for over a long period of time, four or five months I believe, of public hearings, and we are stuck now with a report that we are being asked to report back on within five days. If you have any further comment to make on that, especially as a young person whom we are crying out to for your leadership, say it now so that we can quote you in our report, if we may.

1130

Mr Trépanier: Obviously, I think we all agree that we cannot go through this wrenching process again. I feel like a sponge; I think we all do. We have all been squeezed and we are all dried up. There has to be some type of permanent accounting from the governors to the people.

Now, this is my comment to your response. I hope that this committee is not set up as a type of façade legitimacy. You know, you say: "We've invited you here today, we've listened to you, but then that's it." Hearings such as this must be able to go beyond that point in the future. The way we can do that, as we have all said before, is that we have to start earlier, and I cannot emphasize that point more than I do now. We must begin at the very earliest stages because, like I said, these questions will not be solved by Saturday. I believe that we should extend the deadline.

Mrs Cunningham: Are you talking about our own deadline for this committee to report to this addendum or are you talking about Meech?

Mr Trépanier: I am talking about the Meech deadline.

Mrs Cunningham: Okay.

Mr Wildman: I very much appreciate your presentation. I share your concerns about the process, but just to start, you are aware that legally, even according to this process, the Ontario Legislature does not have to ratify the agreement reached by the first ministers on 9 June by this Saturday.

Mr Trépanier: Yes, I am aware of that.

Mr Wildman: And yet we have been directed by the Legislature, as a committee, to hold hearings and to report, and then a vote will take place tomorrow. On Thursday last I asked the government House leader, the Honourable Chris Ward, what would happen if this committee did not report or if the committee suggested changes. He informed the Legislature that, first, he expects the committee to report, obviously, but that no matter what the committee does, the Legislature will be voting on Wednesday to ratify the agreement reached on 9 June. I think that tells you the importance of this committee's work.

Mr Trépanier: I am glad to hear that then. I was also invited to appear before the Charest committee, which examined the companion resolution by Premier McKenna. Their

report, as we all know, went through the tubes. I feel there was not very much consideration given to that report.

Mr Wildman: I am not sure you understood what I said. If Mr Ward says we are going to be voting despite what this committee does, then this committee's work is not very important.

Mr Trépanier: Right. I am sorry I misheard you. If there is no continuum of the process which occurs today—

Mr Wildman: To be careful, the committee will continue to work, but not on this particular agreement.

Mr Trépanier: But not on this particular subject.

Mr Wildman: It may deal with Senate reform and questions like that.

Mrs Cunningham: That is, if we are very persuasive.

Mr Trépanier: That will all depend on you people gathered here today. I am not trying to choose sides between the members here today.

Mr Wildman: I am not asking you to.

Mr Trépanier: All I am saying is that this process has to go beyond today, beyond tomorrow, beyond next week. These are the most fundamental questions of our country we are talking about. Obviously, I hope that we can all have more input into it in the future—

Mr Wildman: I agree with that.

Mr Trépanier: —if it is in this hearing or in other public hearings, any inquiry. Also, as I have said before, we must have a vote.

Mr Wildman: That is the other thing I wanted to ask you about. As a member of a minority, a Franco-Ontarian, are you not concerned that unless we find a better mechanism for informing the public about these complex issues, if decisions are to be made by referenda, by province-wide votes, many people may not understand the complexities of the issues and we may, in fact, end up with results from referenda that may harm minorities like the one you are a member of?

Mr Trépanier: I have two things to say about that. Number one, since we are doing it at the last minute, prejudices, bad names—there are so many stereotypes that come out, that surface, because of the timing. That is unfortunate. I believe that Canadians are much stronger than that and would have a better understanding of what would happen if we had started much earlier. Then I believe that if we were to have a vote—I tend to disagree with you—I do not think that as many frustrations and feelings would surface out of that vote.

Mr Wildman: I certainly agree with you that if people were better informed—

Mr Trépanier: They must be.

Mr Wildman: —then it is less likely to happen. Thank you.

Mr Mahoney: On the issue of a referendum or a majority vote, one of the things I think Mr Wildman was getting at was this. One of the things that bothers me is that the last federal election was indeed a referendum on free trade. I forget the exact percentages, but over half the country voted against Mr Mulroney.

Mr Trépanier: The popular vote, you mean.

Mr Mahoney: That is right. That, in essence, was a vote against free trade, at least I, and I think most people in the country, interpreted it that way. Because of the setup, he won a vast majority.

How do you deal with the problem of a true majority vote? I know part of it is education, part of it is to ensure that we really do understand the impact of things like the "distinct society" clause and we really do understand the total ramifications, for example, of Bill 178.

I heard a different twist on it just this morning, that in essence we are being lead to believe that Bill 178 prohibits English signs outside of establishments in Quebec. It was suggested to me this morning that the proper interpretation requires that if the signs are going to be in English, then the French section be first. So it does not preclude, if that interpretation is accurate—and I only use that example because there are so many ways of interpreting all of these things.

Frankly, I think the media, with respect to those that here, at times create certain distortions in the way things are put across and the way the public reacts to that. I am quite concerned if on every issue, notwithstanding the fact that obviously these issues are critical to our future, we were to go to a public referendum or series of them, how we get the information out properly, with some confidence, and then how we determine the results. Do we need a two-thirds majority, a clear majority, 51%? If it is 51%, you have half the country upset. Do you have any thoughts on that?

Mr Trépanier: First, I would like to answer what you were discussing initially, that we should have Senate reform. To answer the question of having one majority in one chamber, that is, the House of Commons, first of all, I think we need Senate reform. We have a bicameral institution. Let's use it. Let's make it more effective.

Second, as regards your concern about the referendum or the vote, I believe that it should be held in each province. I think that would better test the mood of the public. I think you would probably have to have a two-thirds majority, because it is hard to answer all the concerns of the people. Obviously, I realize that Canada is such a diverse country that it is very difficult to administer. At least a clear majority, between that and two-thirds, would be acceptable to the people. Those are my views.

Mr Epp: I just want to make the point that when we are talking about process, one of the reasons there is some urgency to pass this motion in the Legislature tomorrow is the concern of the premiers of the provinces to send their message to Manitoba and to Newfoundland that not only are they prepared to make some concessions and not only are they prepared to make promises verbally but they are also prepared to carry them out, put some substance to their particular commitments. I think it is very important that Ontario not just make a commitment and let it sit there for years and not do anything about it.

The other thing is that the committee that is going to be formed nationally will have a lot of hearings. That is in the body of the agreement of the first ministers, as you know. So there are those points.

The other point that was made earlier was that this committee is ongoing and it will continue to have hearings. It is not a closed shop. All of us agree with you that there should be a different process. We are trying to make sure that this process is more effective and more consultative with the Canadian public.

The Chair: Thank you. Any further questions? Merci beaucoup Monsieur Trépanier , ce fut un plaisir de vous avoir ici.

Mr Trépanier: Okay. Merci.

The Chair: You are aware that the 11:20 witness has cancelled. I believe Lawrence Cowell is not present. We will adjourn for a recess.

The committee recessed at 1141.

AFTERNOON SITTING

The committee resumed at 1602 in room 151.

The Chair: We will call the committee to order. Here we are back in Toronto.

ROBERT PRICHARD
RICHARD SIMEON
KATHERINE SWINTON

The Chair: We would like to welcome this afternoon Robert Prichard, president-designate, University of Toronto; Richard Simeon, director, school of public administration, Queen's University; and Katherine Swinton, associate dean of law, University of Toronto law school. As members of the committee know, they were three of the Ontario team in Ottawa during the debate at—I do not know whether we would call it a conference, but the first ministers' something or other. We have asked them to come here this afternoon to shed some light on their perception of the communiqué. I understand that you will have an opening statement and then we will be open for questions.

Mr Prichard: If I might speak first, the three of us are grateful for this opportunity to appear before you and to respond to your questions about the Ottawa accord. I thought it might be helpful if I just briefly introduced my two colleagues and myself and then made a couple of opening remarks.

Professor Katherine Swinton a professor of law and a professor of political science at the University of Toronto. She is an expert in Canadian constitutional law, she is the author of numerous articles on constitutional law, she is co-editor of the leading book on the Meech Lake accord and she is author of a forthcoming book on federalism and the Supreme Court of Canada.

Professor Richard Simeon is professor of political studies and of public administration at Queen's University and director of the school of public administration at Queen's. He is also a specialist in Canadian federalism and public policy, he is author of two important books on the subject of Canadian federalism and he is also the vice-chairman of the Ontario Law Reform Commission. I should have pointed out to you that he also served as a member of Premier Davis's Advisory Committee on Confederation from 1978 to 1982.

I am professor of law and dean of the faculty of law at the University of Toronto. I specialize in economic analysis of law and have done some work on federalism and Canadian public policy. I, like Professor Simeon, serve on the Ontario Law Reform Commission.

The three of us, as the Chair indicated, attended the Ottawa conference as delegates with Ontario's delegation and we were in attendance throughout the meetings in Ottawa. We were invited as independent and non-partisan participants. I should add that Professor Simeon and I also attended, as observers, at the November first ministers' conference. I speak for all of us in saying it was a privilege to serve. We are all of the view that the agreement reached in Ottawa is in the best interests of both Ontario and Canada.

Subject to your approval, sir, we plan to be very limited in our introductory comments. Professor Swinton and I will simply respond to your questions, although I might point out that Professor Swinton, of the three of us, is particularly well qualified to respond to questions on the "distinct society" and the Canada clause questions, as she is one of the six signatories of the opinion that was attached to the communiqué.

Professor Simeon, with your permission, will make just a brief opening statement about certain matters raised in the Ottawa accord.

Dr Simeon: I would like to focus on a couple of areas which are of special interest to me, especially the Senate and the constitutional process.

But to begin with, I would like to say, on behalf of the three of us, that we all believe this is a very vital resolution because it is the first step to the next stage of constitutional renewal following Meech Lake. It is really a kind of token of good faith to those provinces and those individuals that wanted to be sure that the process would not stop there. It seems to us that it was very important to send this signal now, that it was important to have a token of the certainty that change would continue to happen.

It does set out an agenda for further amendments. It also sets out some major improvements in the future process of Constitution-making, designed to help us build national consensus in the future, to improve public consultation and to help reconcile the tensions between federalism and responsible, parliamentary government which really lay at the heart of our difficulties in the Meech Lake process. Let me elaborate just briefly on a few of those points.

In terms of substance, we believe the companion accord really does provide at least some response to virtually all of the major concerns that were made about the original accord. There has been a big response there.

One of the major new items, of course, is the Senate. It was clear at the conference that there must emerge from it some kind of cast-iron commitment to address the issue of the Senate in the near future. The issue of the Senate plays almost the same role in some provinces that the "distinct society" clause plays for people in Quebec. So the companion accord sets up a process and also sets out some of the basic principles or guidelines which will provide the framework for further discussion. I think the guidelines which appear in the document are reasonable and do not unduly pre-empt the work to come by this committee and by many others in Canadian life over the next few years.

I think that by now perhaps almost everyone agrees we are going to end up with an elected Senate. I think almost everyone also agrees with the principle that the Senate's role is to ensure stronger representation for the interests of the smaller provinces, so we are going to end up somewhere between pure equality for all provinces and "rep by pop", or representation by population. That is caught in the phrase "equitable," which is the second guiding principle in the document.

That notion of equitable is one reason why I am not too concerned about Ontario's commitment to give up Senate seats in the event that the reform process over the next few years does not work out, because what Ontario has really done is given a large recognition of the principle of equitable, and that is almost certainly somewhere near where we are going to end up anyway.

Clearly the Senate is much more important for the smaller provinces than it is for us. Our interest really, given our population, is in the House of Commons. Here, the definition of "effective," the third principle in the agreement, is important because it makes it clear that any reform must recognize the ultimate responsibility of the government to the House of Commons. There is a very important safeguard for Ontario there.

While not perfect, it seems to us that the way is open for Senate reform and that Ontario does not take a huge risk in making the offer it has. There is, of course, I think, a considerable gain. There was an immediate gain in the context of the conference itself, in the sense almost of salvaging it, but there is a gain, I think, politically for Ontario in the longer run as well because it will be a token helping to reduce the hostility we all know about which is sometimes felt elsewhere towards big, rich Ontario and its position in the Canadian system.

The other issue I would like to say a word about is process, and that too is addressed in the companion accord. This is, of course, the first real test we have had of the 1982 amending process, the very first formal amending process we have had in Canada. Certainly I think everyone would agree that it has revealed some real flaws in that process: the difficulty of making a unanimity rule on some important issues and the difficulty, when governments can change, of a three-year period in which to pass the resolution. Most important, I think it has revealed the difficulty of reconciling full public participation with the need for forging intergovernmental agreement.

The logic of federalism requires intergovernmental bargains which are hard to change by any one government or Legislature without reopening the whole arrangement. Then, on the other hand, the logic of parliamentary government, with legislative ratification, is of course that governments must be responsible to their own legislatures. It seems to me that there really is a fundamental tension there.

The year 1982 really began the process of trying to democratize our Constitution-making process, through introducing that requirement of legislative ratification, and now three important further steps are contemplated in the companion agreement.

First of all is the possibility mentioned there, although not spelled out in detail, of requiring mandatory public hearings in the future. It seems to me this is an idea to which Ontario can make a big contribution by putting on some flesh and spelling it out in more detail. For example, I think there is a crucial need to begin public hearings early in the process, when ideas are still being formed and before governments are locked into the agreement. Once the agreement is forged, then we know it is very hard to have effective legislative changes made.

Meech Lake, I think, opens one possibility here. It requires, of course, annual first ministers' conferences on the Constitution. I personally would like to see these being regularly scheduled—say, in November every year—with a broad agenda known in advance. Then I would like to see Ontario and other provinces establish a procedure in which public hearings are held, say, three months in advance of that conference in order to solicit views which will then help the government formulate the position it will take to the conference.

The other advantage of these regular conferences is the realization, which more and more people will have, that not every issue and every concern must be debated each time; there will always be another kick at the can. It was that sense that people may not have another kick at the can, and therefore the dumping in of all of the issues, which was another reason why the Meech Lake process was so difficult and which may be now alleviated.

1610

The second big innovation is the commission suggestion for developing plans for developing plans for Senate reform. It may well be a model for other kinds of constitutional change in the future, so I think it is very vital to design this model well. It has, I think, a number of major advantages.

First of all, it does allow for public participation early.

Second, if, as I personally strongly believe it should be, it is made up largely of legislators, then it goes a long way to bridging that gap between federalism and a legislative process that I mentioned.

Third, it will help promote consensus-building because legislators from each province will be directly exposed to the views and concerns of citizens in every other province, hopefully thereby alleviating the kind of provincialism or parochialism that often attends these debates.

The third innovation, which I will not say much about, is the creation of a committee of the House of Commons to explore the Canada clause.

There are other process issues as well, but I think there is a real opportunity here for putting some flesh on some ideas which will really very much improve the process in the future.

Those are just a very few observations, perhaps more to get the discussion going than anything else. It is certainly a complex document.

Mr Wildman: You indicated that you believe that from here on, despite the five-year hiatus, we will probably be seeing an elected Senate. Would you not agree that with election will come an enhancement of legitimacy and role no matter what decisions are made with regard to possible new powers to protect the interests of regions? If that is the case, does not representation—numbers—perhaps become very important?

Dr Simeon: It is clear that the more powerful the Senate is, the more important the numbers are. It is certainly true that an elected Senate is going to have a greater legitimacy than the one at the moment. But I do not think any of the proponents of Senate reform, even those in Alberta who espouse most strongly the idea of the triple E Senate, envision a Senate which has co-equal powers to the House of Commons. What people seem to be talking about—even, as I say, the proponents—are senates with suspensive vetoes and that sort of thing. I would personally believe that there is a real tradeoff between the legitimacy from election and powers. Certainly Ontario would want to ensure that the reformed Senate had powers which were directly related to its function. I think that is what is important, and the function here is to give a stronger voice to smaller regions within the corridors of the central government. It is not to replace the House.

The Chair: We have a problem. There is a division call. It is a five-minute bell. We now have three minutes and 20 seconds to get there. We are sorry we are going to have to interrupt the proceedings. We will be back as soon as we can.

The committee recessed at 1613.

1628

The Chair: The committee will come back to order, please.

Mr Prichard: Mr Wildman, can we make one further comment on your first question? I think it is fair to say—it is

certainly my view and I know Dr Simeon shares it—that Ontario's interest would be served by clearly linking any decisions to increase the legitimacy of the Senate in future discussions and negotiations to a careful delineation and limitation of the powers of the Senate. As you know, the Senate powers now are full powers. Any move to legitimize the Senate would necessarily, from Ontario's perspective, have to be accompanied by a delineation and restriction of the powers through the variety of means available.

Mr Wildman: Because of the time frame we have, I do not want to get into a full debate on the Senate proposal. I could certainly raise a number of questions. I just want to point out that Professor Hogg, when he appeared before the committee, agreed with me that 18 is now the floor. In other words, we are never going to return to 24, whatever happens. Maybe we should not. Frankly, the Attorney General made the point that if the Senate is not reformed, it means nothing to lose six because it is a waste of time anyway. I understand that. I do not believe we should have a Senate, but having said that, I believe, and I agree with you, that election is likely to take place. Once we have an election, my experience is that historically elected senates are aggrandizing organizations and become more and more powerful.

I would like to move to your comments regarding the process. I think everyone on this committee, and certainly I think the majority of Canadians, reject what has been called the pressure-cooker, collective bargaining approach to behind-closed-door horse-trading that has been used to pressure so-called dissident premiers into accepting the constitutional amendment.

It is my view that in requiring this committee to hold hearings on the first ministers' agreement and to report back within seven days for a ratification vote, rather than trying to change that process, we are in fact confirming it and perpetuating it, particularly when there is no legal requirement for Ontario to ratify this agreement prior to 23 June.

I want to deal with the question of goodwill and an act of good faith to persuade other legislatures. Would you not agree that developments in the Manitoba Legislature in the last few days demonstrate that what we do or do not do has very little, if any, effect on whether or not that province ratifies the Meech Lake accord before 23 June?

Dr Simeon: We obviously have no direct control over what happens in Manitoba.

Mr Wildman: I did not say control; I said effect.

Dr Simeon: Well, even direct influence. I think that we are very close to the end of that string, but it has not been fully played out yet. I agree the possibilities of passage do not look that great in Manitoba, but it seems to me that the point about needing to send the signal to all those who did bring very deeply held concerns about Meech Lake and which have been very much addressed in this quarter, the need to send that message, is very important and that we should not hold back on sending that message because we are confused or uncertain about what is likely to happen in two other provinces. I agree it is not going to change hugely public opinion in either of those provinces, but I think we should really do what we have committed ourselves to do and send that signal.

Mr Wildman: That is an interesting comment you just made, because the Premier said in the Legislature that there was no commitment.

Dr Simeon: There is no legal commitment.

Mr Wildman: No, no; he did not say that. He acknowledged that, but he said there was no commitment made in the Legislature. I understand privately he has said there was something called an unarticulated commitment, whatever that means, to other Premiers, but the Premier has stated in the Legislature that there was no commitment.

Dr Simeon: I would not want to speak for the Premier.

Mr Wildman: I am not asking you to. The reason I am raising that is I am wondering where you got the impression that there was a commitment if the Premier is saying there was not one.

Dr Simeon: I think I should correct myself. My personal view is that it is very, very important for the future process that governments which had been supportive of Meech Lake provide this indication that they really are committed to this second stage. I believe that personally. It is not a matter of commitments that I have not participated in.

Mr Wildman: I would just like to finish off by saying that it has been clear in the truncated so-called public hearing process that we have just gone through, which I would prefer to describe as a PR operation, that the aboriginal groups that have appeared before this committee, including the Chiefs of Ontario, the Inuit Tapirisat, the Native Council of Canada, the Union of Ontario Indians, and particularly the native women, are determined to kill Meech Lake, and with the assistance of Elijah Harper, that will happen. So the whole exercise is somewhat academic.

Ms Oddie Munro: I think the public hearings of the last two days have been very instructive, as were the ones last week. If you are interested in feedback, we certainly did get a lot of frustration about the process, I think so much so that it has been difficult to convince people that what is in the companion resolution does speak to process. None the less, I think after whatever dialogue was possible, given time, certain process dilemmas were acknowledged.

On Senate reform, is it your understanding that the representatives from the provinces were to be legislators? Is that what you are saying?

Dr Simeon: The document does not specify who they will be. There was, I think, considerable discussion around the table as to what the exact makeup would be, and there are many, many questions actually still to be resolved on the exact design of the commission, but I think the general understanding, as far as I could tell, was that a major component, if not the entire group, would be made up of legislators, partly to achieve that linking between the legislative processes and the intergovernmental processes which I alluded to.

Ms Oddie Munro: So it may be possible to have some kind of a formula for inclusion of legislators and advisers or whatever, because we did hear that, since this province already has a committee which is looking into many of the concerns of the Constitution, it may in fact be to our advantage to have other representatives or a combination of representatives on that commission.

Dr Simeon: Presumably, one would like to have some link between provincial committees, legislative committees, and that commission.

Ms Oddie Munro: The other issue that Mr Wildman has raised is the native people, the first nations people of Canada, and their desire to be recognized. I think sovereignty association was mentioned in some cases, but to be recognized at the outset as being a partner, whether it be in the preamble or whether it be in a more consistent or firm notion of the time in which the constitutional meetings take place with the first nations people.

Could you tell me, when you take a look at the preamble of the Constitution, to what extent the aboriginal peoples are mentioned there and how are they included in other documents, including the charter?

Dr Simeon: Perhaps Professor Swinton would be better to answer this.

Ms Swinton: We have several constitutional documents, as I am sure you are well aware. In the 1867 one, which sort of leads off the consolidation of our documents, there is no mention of Canadian characteristics. I guess one might say it is a very dry statement about a group of colonies that wanted to get together to form a country. Even in the 1982 amendment with the charter, the preamble does not expressly recognize aboriginal peoples but there are two provisions recognizing aboriginal rights, and then in the 1987 amendment, in effect the Meech Lake accord, there is the reference in section 16 that the "distinct society" clause does not override the rights in the 1982 act nor the mention that the federal government has jurisdiction over Indians and lands reserved for Indians in the 1867 document.

I guess to come back, the preamble right now, if that is your real focus, does not mention much about Canadian characteristics, including aboriginal rights.

Ms Oddie Munro: I realize it is an issue that is much more sensitive than I can be at the moment; I am just trying to get an appreciation for it.

The issue that all of the native peoples brought before us was that they did not just want to be included in agendas which spoke directly to their concerns, but they wanted to be there at the table when other issues came up for discussion in relationship to the development and direction of Canada, so I just thought I would bring that to your attention. There was no mention as to what status they would hold with the first ministers, just an indication, I think in every case, that they wanted to be there, so I think that is something that we have to grapple with. It was very strong.

I would think that one of the problems we have is, when we say that the Senate reform is the, with the being underlined, is that a strong term, the constitutional priority, or do you see, the way in which the process is unfolding, that other things will be happening at the same time, all of which will have priority in their own right?

Dr Simeon: I think we are going to have a very crowded constitutional agenda and all of us constitutional types are going to be overworked in the next little while. Certainly the Senate, that prime issue, is going to be very important, but the accord is very clear that there are a lot of other things going to be going on simultaneously.

Ms Swinton: Just to link up to that, one of the priorities in terms of time is the initiation of a parliamentary committee to discuss the contents of the Canada clause; that is, the statement of what our fundamental characteristics will be and whether it will be in the preamble or whether it will be in the text. So in many ways that one has the firmest time commitment, because the federal government says it wants that to start this summer and get going, and one could not exclude the aboriginal peoples from an important part in that process.

Mr Prichard: While we are on the question of aboriginals, I would just like to comment on Mr Wildman's comment with respect to this being academic if the aboriginal leaders do make it impossible for this matter to come to a vote by Saturday in Manitoba. I would want to distance myself from that observation—not from Mr Wildman's judgement as to what is going to happen between now and Saturday; I respect very much your judgement on that.

Mr Wildman: It is not too difficult to predict.

Mr Prichard: But I would respect your judgement on that, and I do not differ from that, I simply want to say that, in the event the Meech Lake accord is not passed by Saturday, regrettable, in my view, as that is, it is a very different circumstance whether the reason for that is a difference over Quebec and Quebec's coming into the Constitution as full partner, which is the very purpose of this round, as opposed to foundering over an issue which in many ways unites Canadians rather than divides Canadians, a concern for aboriginal Canadians. That is not an issue that is east versus west or French versus English, that is an issue which I think tugs against most Canadians in one way or another, and how one sorts out that issue seems to me to be quite distinct from the issue that led to this round, the Quebec round.

1640

So I think it is terribly important that you continue to make a judgement as to what steps Ontario can take to maximize the support for passage of Meech, regardless of whether or not it will come to a final conclusion now because of the procedural innovations. I think that is the issue for Ontario to keep its eye on, regardless of what happens on Saturday.

Mr Wildman: If I could just respond, I agree with you that if Meech Lake were to founder because of the sense of betrayal that aboriginal leaders feel, I think quite rightly, that is quite a different thing than if it founders because of English Canada being seen to reject Quebec. I agree with that.

Having said that, though, I must distance myself from your observation that aboriginal issues unite Canadians. If they had united Canadians, the process and the conferences between the early 1980s and 1987 would have had a very different result.

Mr Prichard: My suggestion in uniting is not that there are not differences of view but that those differences of view are spread across Canada. In every part of Canada you will find people on both sides, but it is not an issue that plays along the usual cleavages of Canadian politics, and in that sense it is one which I think concerns everyone. I agree, there are differences of view, but if you accept the logic that it is critically important that on the issue of Quebec coming as full member under the Constitution, then I think it leaves the conclusion that Ontario should not let up now. Despite the difficulties between now and Saturday, Ontario should not let up now, because, as you know, there are other provinces contemplating pulling back from commitments, contemplating not pressing to the end, and I think any encouragement Ontario were to give to those provinces, in particular to Newfoundland, would be regrettable now. Even though I accept your judgement that there are all kinds of difficulties between now and Saturday, I think Ontario's posture should continue to be one of doing everything possible to bring the Quebec round to a successful completion.

Mr Wildman: I do not want to turn this into a debate, but you certainly would agree that aboriginal leaders have a very good reason to be very sceptical of any so-called commitments in this agreement.

Mr Prichard: I do not disagree with you.

Mr Mahoney: Just before my supplementary, I think Bud would agree that—I would be curious to see where all those supporting aboriginal rights would wind up if indeed they were facing a choice of having to support them being called distinct. I think you would see some agendas changing pretty quickly.

Mr Wildman: We discussed all that in Sudbury.

Mr Mahoney: Yes, that is right.

Professor Simeon, when you said the accord, I do not know if you mean Meech or if you mean the Ottawa accord.

Dr Simeon: I meant the companion resolution.

Mr Mahoney: You say that it is very clear on the other issues that will be dealt with simultaneously to the Senate commission being set up. Could you tell us exactly where it says that and what wording it uses?

Dr Simeon: It does not set out a timetable for all of the issues in the document. There are many issues mentioned, as I say. One of them does set up a process right away, which is the Commons committee to look at the Canada clause preamble set of issues, and that has a mandate to get going almost immediately. Then it is kind of two lists in the document. One is the list of things like giving the territories a role in nominating senators and judges, putting section 28 into section 16 of the 1987 accord and so on. There, while it is not absolutely clear in the document, I do not think, although my colleagues might correct me, I think the sense is that is an immediate set of issues which would be dealt with very soon, along with the Senate, where we initiate a set of discussions very soon, although there is a five-year time limit on the full resolution of that process.

Mr Mahoney: I took the question to be more surrounding the aboriginal rights, and subsection 3(4) does not strike me as being as clear as it perhaps could have been in giving the first nations some comfort that their items would indeed be on an agenda by such and such a time. We have got one suggestion of 16 July, and this one says some nebulous every three years, one year after proclamation, which could be three years from now. So you could be looking technically, if you extrapolate that, at 6 years from now. From the day that it is first passed, you could be looking potentially at six years before there is a session held on that issue.

Dr Simeon: I suppose you could potentially, and I agree with you that it is not spelled out that it will be held this summer or this fall or whatever. I would have thought that the political dynamic now is such that we will see those discussions beginning quite soon, and of course there is the—

Mr Mahoney: Or never.

Dr Simeon: No, I do not think never.

Mr Mahoney: Depending on Saturday.

Mr Jackson: As one who has participated in the public hearings, I am somewhat distressed at a number of things, but I also am trying to struggle with the notion of how Ontario—well, first let me put it this way. We do not wish to simply relegate our participation in this national debate to the moment at which the Premier made the decision to offer the Senate seats. There has been sufficient time between that point and now, and Saturday, for us to consider other options.

Although we are not charged with the responsibility of recommending an action for the Premier, clearly, when I look at the amendment, the side document that was signed a week ago, I find within it some elements which might help us back out of the dilemma we are in, and as one who has done collective bargaining, I know that the processes of complications in collective bargaining have within them the process to get out of problems with collective bargaining.

I want to focus on your reference that there is some real magic and importance to us ratifying the Senate offer, because that concerns me greatly. It strikes me that in the two provinces to which we are making this gesture, the issues of Senate reform are not in the forefront. They are probably not rated in the top three issues of concern to those two provinces at the moment. In fact, when I really analyse what I witnessed, along with a lot of Canadians, on the Saturday night, I witnessed the most backslapping incurred by those premiers who had already ratified on the issue of Senate reform, but strangely, the two provinces that we appear to be doing this major adjustment in Senate reform for were strangely silent about commenting on it. Did you want to respond to that, and then I will give you the area of concern that I want to talk about—

Dr Simeon: Yes, I would like to respond to that.

Mr Jackson: —because I think there is a role for the Premier here in terms of addressing the situation in Manitoba, and its key is in the side agreement.

Dr Simeon: I think the importance of Senate reform is the response to the interests and concerns of a large number of provinces, which should be addressed over a long period of time.

Mr Jackson: I recognize that.

Dr Simeon: That did not come up, and the notion that we had to have something in here with respect to at least a process, and perhaps even some guidelines or parameters, for Senate reform has been part of the Meech Lake discussion for a very, very long time.

Mr Jackson: We all understand that.

Dr Simeon: Second, while it is true, if you think of the three provinces which dissented, it was probably least important for New Brunswick, it has been quite an important issue in Manitoba, as it has been in other western provinces, and it was very much in Mr Wells's top three issues.

Mr Jackson: But to understand what I said, to listen to me carefully, what I said was that the night of the event, once they emerged, and subsequently, we have not seen a lot of attention brought to that issue. That is not to diminish in any way the Premier's offer; I am not saying that. But when I listened carefully to native groups in the last few days, they are very concerned about the primacy associated with Senate reform.

It strikes me, when I analyse the offer that we are told was presented to the chiefs by the Prime Minister—and I am quite convinced that the Prime Minister, and his office, is probably the last person to be trying to engender any type of negotiations with native leaders in this country at this time—that role might rightly move quickly to a Premier. There are risks inherent with that, but the focus might shift from Senate reform to the

primacy of the Canada clause or the primacy of a better refinement of the participation, the terms of participation, for the first nations people of Canada.

1650

In that sense we may, by enforcing something on which Elijah Harper is speaking out to all Canadians, by nailing down this notion of Senate primacy before Canadians have had enough time to tell the other 10 premiers that we as a nation would rather sit on Senate reform than we would to proceed, without native peoples, to ensure that Quebec enters our Constitution—and it strikes me that we are losing that time, and if there is an extension, which may kill the accord; obviously we have to talk extension if we are getting into the critical time frame of Saturday—one of our greatest solutions out is to strike this pact which was made behind closed doors, that Senate reform is the primary issue for Canadians. I believe that we have not asked the Canadian people if they would like to reverse that.

That does not mean David Peterson's offer was wrong. It just means that in the course of a short week its context has changed dramatically. We cannot second-guess what has happened in Manitoba. We can only determine to what extent we as a province can react to those events and where the solutions are.

The real leadership for a Premier in this country, I believe, lies in that one clause, and a genuine offer. It is a risky offer, but I think the premiers of this country should be brought to be asked the question, "Would you be prepared to set aside Senate reform in the best interests of an accommodation for aboriginal peoples at this time?" If every Premier were canvassed, we might find out that our Premier would be unwilling to do that.

I am having great difficulty, and tomorrow is the day we vote, with putting tacit approval that that is our priority as a province when our priority as a province to bring Quebec into this Constitution lies in amending that section—maybe taking a week to do it—and extending to aboriginal peoples in every province some language which they might be very accepting of. In that sense, Quebec and aboriginal peoples will have achieved in one day what we have failed to do for both since 1982.

I really want to ask you to respond in the context of our actions by cementing that and denying our Premier the option to present it as a way out, because it certainly will not come from the Prime Minister of this country.

Dr Simeon: I think there is certainly lots and lots of room for initiative by Ontario and by the Premier of Ontario, but I would question whether it is a matter of either/or.

Mr Jackson: What do you mean by that?

Dr Simeon: Either we focus entirely on the Senate or we focus on aboriginal. The issue is both.

Mr Jackson: I am sorry to interrupt you, but you do not think it is an accident, the Premier's interest in going to Newfoundland, where aboriginal issues are not in the forefront, but he has avoided Manitoba, where aboriginal issues are a critical issue? I want you to focus on our Premier's office.

The Chair: He was invited to Newfoundland, Mr Jackson. Let him answer the question, please.

Mr Jackson: But his interest—that is what I am saying.

Dr Simeon: I would not want to comment on that aspect of it, but I think it is possible to move the aboriginal issue up the agenda. I also think, just in terms of the premise of your question, that if nothing had been said about the Senate in the document we are discussing now, the outcry about that—"How come nothing on that?"—would have been the firestorm that we would now be dealing with. We would be dealing with a revolt in the Alberta and British Columbia legislatures on exactly that issue.

Partly the dilemma we are dealing with here is that the constitutional agenda is so big and so packed that a process which, as Professor Prichard said, started out with a very, very limited purpose—we had done a whole bunch of things in 1982 and now we had this one gap and so on—became a kind of lightning rod for all these other genuinely very, very important issues. The system just absolutely overloaded. I think it is very difficult in that kind of situation to focus on one or focus on the other and so on, so we have to set up these processes.

Mr Jackson: I am not asking you to go back to—

The Chair: We have other questioners. Can we come back to you if we have time?

Mr Jackson: I do not think I have taken an undue amount of time. I will be very quick.

The Chair: You have been eight minutes now, which is longer than anybody else. Could we come back to you? I do not know whether there are other members.

Mr Jackson: I will be very brief.

The Chair: Very brief then, please.

Mr Prichard: We can give you more of an answer on this, if you would like.

Mr Jackson: I do not want to go back three weeks ago. We are dealing with the three provinces which held out and which hold the key to us ratifying and bringing Quebec in. Your suggestion about the two provinces you name—they are already signatories. I am merely stating that what we heard when we listened to native peoples, which you may not have had the benefit of during that one-week period—we have subsequently had the benefit—the section which heightens the importance of Senate reform has created a red flag to them, and as such, the key to getting out of this situation may lie within that clause. That is all I was suggesting.

I know how complex and compounded it is and how they got to the point. I am talking about devolving from a hard position we are going to get out of, if I use negotiating terms, not how we evolve to that hard position, but how we devolve from the hard position to find an equitable position for all the premiers, because that is the process we are in, in order to find a solution. That was the nature of my question.

Mr Prichard: There was some learning about what might or might not have gone on during that week. I accept your premise that maybe if the negotiations were held today rather than two weeks ago the outcome would be different, but we did learn during the week quite clearly that Mr Wells and Mr Filmon, whatever your assessment now of their commitment to Senate reform, were not prepared to join an agreement with the other premiers in the absence of a substantive move on the Senate. That became crystal clear.

Mr Jackson: We all agree on that.

Mr Prichard: So at that time at least, they were completely committed to that. We learned that by testing it in every way. When I say we, the delegations together found that.

The second thing that became crystal clear during the week was that there would be no agreement with the province of

Quebec on a Canada clause in this round. That became absolutely crystal clear in the discussions.

So those two things, in that discussion for agreement now, one was a mandatory element of agreement for Mr Wells and Mr Filmon and the other was one which was not going to be on. So it is the case that to resolve the issues related to the aboriginal concerns is going to take leadership, creativity and suggestions.

I am not sure, though, that it is possible to now make useful guesses as to the outcomes of a subsequent round of negotiations, which is really where your question leads us, to try to work out what strategies might work, without the benefit of being in conference with the other first ministers to see what their particular reactions will be. But we did have some pretty strong reactions on those two matters which you raised in your earlier remarks.

Mr Eves: I have two questions, one of Professor Simeon and one of Professor Swinton. The first one of Professor Simeon I guess I would like to preface by a few comments or statements.

We had Professor Hogg in here the first day of our hearings last week. He indicated that legally the province of Ontario has three years from the date that the first legislative body in Canada ratifies the 1990 constitutional agreement to do the same. That is the time limit. The Premier has indicated, as we all know, that it would be a sign of good faith on the part of Ontario that he would like to see it done before the other hold-out provinces, for lack of a better description, are to vote or pass judgement on the Meech Lake accord.

I have been sitting on this committee since 1987 when it was first incorporated. You indicated in your remarks that at least some response to the items of concern had been made in the 1990 constitutional agreement. That is quite true. This committee also made many suggestions, more suggestions than those contained in the 1990 agreement, and of a much similar nature in June 1988. We are now in June 1990. Some of the comments that this committee made, and I am talking about the majority report and not just the minority report that was filed, were with respect to the Canada clause, aboriginal concerns and process, I think three of the most major issues that are of concern today. This committee recognized and identified them in June 1988 in its report to the Ontario Legislature.

Then the members of this committee find ourselves in the situation that we are sitting here two years later, everybody waited until the 11th hour in 1990 instead of addressing these concerns in the rest of 1988, all of 1989 and the first half of 1990. Everybody just sort of sat on their hands in terms of formal constitutional process. I am not suggesting that there were never any discussions going on behind the scenes; I am sure there were.

1700

Do you agree with the process that this committee is going through right now? We were told a week ago in the Ontario Legislature by the Premier, at least in response to a question that I asked him, "Of course, you realize you cannot change the 1990 constitutional agreement; you cannot change one comma in it, you cannot change one word in it." I have to ask myself the question, being a member of this committee, what have we been doing with public hearings for the last six days when we are told from the outset that the outcome is already predetermined and we have to approve the package as it is?

This committee made recommendations with respect to process in June 1988. Now we are told by the Premier of the province in June 1990: "You have six days of public hearings. I don't care what the public says,"—virtually; that is not exactly what he said, I am paraphrasing. I am giving you my opinion of what the effect is—"and you're going to have to pass this thing the way it is, like it or lump it, because that is the only deal we can get and we only have until June 23rd to do this."

Do you agree with the process we are going through right now, in the last six days? Do you think it is a meaningful public consultation process?

Dr Simeon: I certainly cannot say that it is the ideal process, quite obviously. I guess my view on it would be that we are in the end game of the Meech Lake process, the one that started in 1987, and we have to complete that game. There are lots of problems with the way that game is being played, and you referred to some of them, but I think we have to play that one out. We have to do it with some kind of confidence, which I think is in the document, that the process will be a new one in the future and that we will be able to address these issues.

For example, on something like the Canada clause, and some of the others as well, we will not be locked into the unanimity rule. We are locked into the unanimity rule in the Meech Lake process. The Canada clause and any changes in the charter and so on will be a result of the seven and 50. So it is with reluctance that I say I think we have to play out this game and it is coming to this extraordinary head this week. To do anything to derail this game now, given the importance of the first and primary goal of the exercise, would be very wrong for Ontario.

Mr Eves: I think I appreciate that. I appreciate the situation we are in, it is just somewhat frustrating to be a member of a committee that made a recommendation to address the process, among other concerns, two years ago and now to be back here two years later almost to the day going through the same problems with the same process. It is somewhat frustrating, to say the least. I am not blaming that on any one individual, either. There are 11 first ministers out there, all of whom could have taken significant steps to address the issue and none of whom, I might add, with respect to open public consultation process, at least in my opinion, did. So they are batting zero for 11.

Professor Swinton, I would just like to ask you, as a co-author of the legal opinion or interpretation of the "distinct society" clause which was attached to the 1990 constitutional agreement, what your opinion is about the legal effect of that opinion.

Ms Swinton: I think it would be admissible in a court of law in interpreting the "distinct society" clause, which was obviously the focus. The courts, particularly since the entrenchment of the Charter of Rights, have been willing to accept quite a variety of what one would call extrinsic materials in legislative history. I would think, particularly because of the letter that is appended to the constitutional agreement, the court would be likely to look at it.

As to the weight, I do not make any guarantees that this is going to be determinative of the meaning. It is up to the courts to make the ultimate decision about the interpretation. I think how it would likely be used is to show, I guess, at least some understanding of the premiers who took this back after the letter was appended to the agreement and is part of the legislative history of their understanding.

Mr Eves: In your opinion, would it have more weight if the 11 first ministers had signed it?

Ms Swinton: Yes.

Mr Allen: As in most committees, our questioning at the end of a history of hearings, I think, tends to relate rather more to the positioning we are moving towards in relationship to a final vote than perhaps to eliciting a broad range of information that is going to be useful for an intellectual evaluation of the circumstances.

Miss Roberts: My question is completely different.

Mr Jackson: He just wants equal time with his colleague, that is why.

Mr Allen: I must say we will hear the last response in ways that we want to hear it, because it is quite obvious that one Premier could not sign a document that said anything that would qualify in any way the "distinct society" clause. That was Premier Bourassa. If Premier Bourassa could not sign it, the other 10 could not sign it. That is the long and the short of it.

Anybody who imagines that this letter, even if signed by the premiers, would somehow be definitive in a specific case before the courts would also have to have his head read. That is not the way these things work. But it is none the less important as a guideline to people who are concerned about a problem as to how learned persons would evaluate the relationship between the charter on the one hand and the accord, the "distinct society" provision in particular.

Ms Swinton: If I could follow up on that, when I said yes, I guess I really should have elaborated. Even if all the premiers had signed the letter, it is not binding on the courts as well, as you are saying. The courts are at times suspicious of what legislators say about the meaning of legislation and they have said they should have been, at least in one opinion. So that does not make it definitive as well, let alone there are political ramifications, as you have said, for the premiers, in signing that letter.

Mr Allen: I want to make another prefatory remark. My colleague the member for Algoma clearly has some very deep feelings and convictions on this subject, and I must say that I honour and respect those. He has throughout the whole of his political career taken his position alongside the first peoples of this country and this province and has done that with distinction and consistency.

Mr Wildman: Do not say too much. I might change my mind.

Mr Allen: But I think it is equally clear that I and other colleagues in our caucus may not, as a majority, in our vote tomorrow reflect that same positioning.

I do want to come back to the aboriginal question. This committee did hear testimony from a number of aboriginal groups in 1988, and certainly no one of them told us that it was prepared to let its agenda, at the end of the day, stand in the way of the ratification of Meech Lake and the recognition of Quebec as a "distinct society" through the Meech Lake accord. This committee, in its companion resolutions, took the very language, in fact the very idea of a companion resolution, from them as a way of moving towards some way of resolving some of the problems around the accord and used one of their companion resolutions verbatim as one of the companion resolutions we recommended to the rest of the country.

Against that background, what I want to ask you is what contact you had with the aboriginal groups that were in Ottawa that week and whether you had any discussions with them or whether the Ontario delegation had any discussions with them, and whether the question was asked whether they were looking for concessions or whether they were positioning themselves at that time to kill the accord. I think it is fairly critical for all of us to think back to when that changed position and strategy came about. I am not quite sure when it was. Do you have anything to say to us about that?

Ms Swinton: I do not think any of the, shall we call it, independent group met with the aboriginal peoples. I know of at least two meetings with members of the delegation and aboriginal groups, but it was a large delegation and we were not always aware of everything that was said in the meetings that took place.

1710

Mr Prichard: Professor Swinton is correct. There were at least a couple of meetings, in fact in the room next to us, where some representatives of Ontario—but regrettably, we are not the right three people to report to you on the content of those meetings, because none of us were at those particular sessions. Mr Erasmus and his colleagues were there and were meeting with—

Mr Allen: May I ask you who they were? Was it the Attorney General and the Premier?

Ms Swinton: Don Obonsawin from the Ministry of Intergovernmental Affairs was there.

Mr Prichard: I am trying to recall who went with him—it may have been Mr Bredt from the Ministry of the Attorney General—but at least Mr Obonsawin was carrying on those meetings. Also, various representatives of the aboriginal people were very present at the conference in terms of in the lounges, demonstrating outside. There was much casual conversation, but in terms of formal meetings, I think, regrettably, we are not the right three people to tell you the content of those meetings.

Mr Allen: I have had it reported to me directly that in a conversation two of the principal aboriginal leaders who were present said quite flatly that they were not at that point in time out to kill Meech, that they were there for concessions and that was their strategy. That was midway in the conference.

Dr Simeon: On that point, which would reinforce that, the leaders of both the Yukon and the Northwest Territories spoke quite sympathetically about the agreement at the end of the session on Saturday night. Neither of them are aboriginal leaders, obviously, but they both have very large aboriginal constituencies, so I think that would reinforce the notion. I think no one envisioned the situation that was going to develop this week in Manitoba; I am sure not anyone, including most leaders of the aboriginal community. So the possibility of actually defeating Meech Lake I do not think probably had occurred to very many people.

Mr Wildman: Well, Erasmus certainly made his position clear on Saturday night.

Mr Allen: The next question I want to ask you is not leaning specifically on your specialty as much as on your general perceptiveness as people involved and concerned. Would you say we should be concerned about the latest stage of aboriginal reaction and the support it is getting, from the perspective that

as others in the Canadian public who are non-native join the native protest, this will in fact be seen in Quebec as not just an aboriginal defeat of Meech Lake, but as one that was promoted and abetted by anglophones in the rest of the country?

Dr Simeon: My very personal view is that this is exactly how it will be interpreted in Quebec and that this process is happening to some extent.

Mr Allen: Members of this committee had an experience yesterday in Sudbury where there was massive support from the Confederation of Regions group for the native population, whereas some well-placed questions made it quite apparent that they were not at all sympathetic with the aboriginal agenda per se.

Mr Prichard: It is a really regrettable alliance. These aboriginal questions are absolutely fundamental to Canada and are issues that as a country and as a province we must address. To see that linked to these other things is grossly regrettable. I think the difficult issue for you is to make a judgement. Again, this is always a judgement and that is your line of work, to draw these judgements.

I think the tough judgement is, can we achieve significant reform with respect to the aboriginal peoples of Canada without first completing the Quebec round? As I understand it, the position of the government of Ontario—that judgement was taken after the last attempted aboriginal reform—was that this could not be accomplished without the full participation of Quebec, that it was not possible to accomplish that.

If you share that judgement, then I think the simultaneity requirement of also doing aboriginal reform now is damaging. If on the other hand you do not share that judgement, you can go a different route. But I think it brings you right back to the central judgement: Must we complete the Quebec round first? That is a judgement I personally remain comfortable with, but again it is a reasonable matter on which very good people can differ, and if you differ, surely then the aboriginal issues rank at least equally, if not ahead of all other issues. But if you do not think it is possible to have constitutional reform in Canada without Quebec being a full member through the Meech process, then we have to complete this first, without saying that is assigning a higher priority. It is making a judgement about how the process of constitutional reform goes.

It is a highly regrettable choice, particularly if it appears an issue of prioritization, of saying, "This is more important than that." I do not personally believe it is that. My own judgement is that it is getting a process that can work, which has not been able to work since 1982. We have to get a process that can work.

I respect fully those who make a different judgement about it when their concerns come from the direction you were referring to. Mr Wildman's concern seems to me utterly legitimate and is a point of view that should be respected. But you do have to make that judgement: Can constitutional reform work in Canada without completing the Quebec round? I do not believe it can. If you take that view, we have to do this before we can turn to the truly demanding and essential issues relating to aboriginal peoples.

Mr Allen: The question I want to ask about the Senate is your judgement with respect to the status that senators would have in five years' time if there is no Senate reform in the interval and premiers begin once more electing senators. I take it that what we would have in that instance would be senators elected for life. Has a senator elected for life really that much more status by being elected, in as much as there is no sort of back and forth with a constituency and so on, or have we just traded appointment for election and there is not much difference in status?

Dr Simeon: I agree with you entirely. I think the importance of election is accountability and the fact that you can be defeated if you do not do a good job. Although the Prime Minister has indicated he would not wish to appoint elected people à la Waters while this is going on, even if he did and they were elected, I think the legitimacy gained for them would be very small and their credibility would not be great, because they would never have to face the voters again, so I agree.

Mr Prichard: I prefer to say they would be incredible, to be elected for life. I believe it would be something verging on farce to imagine election, in the full sense of election, for life.

Miss Roberts: I agree that elected for life is not even thinkable.

What I would like to do is sort of indicate that we have had the crisis of Senate reform a week or two weeks ago. Now we have the aboriginal crisis and maybe next week it will be something else. I want to look to the future, though, the process. We have in this communiqué the Canada clause, other situations, and you have talked about them very briefly. What we need is some of your advice on how we as a committee can be helpful in setting up the many processes that are there. You have the Canada clause, the House of Commons committee that starts on 16 July. How are we going to help the Ontario people have a more open process to deal with that Canada clause? What should we as a committee or we as a government be doing about that?

The next one is the commission on Senate reform. What should we be doing with respect to that commission? Some of us may or may not be on it. There may or may not be persons other than legislators on it. How do we get the public to respond to the commission, and at the same time should we be dealing with Senate reform as a committee or as a government?

On the public hearings you have suggested around the first ministers' meetings on the constitutional agenda, how are we going to help the public get some input into what that first ministers' agenda should be each year or how it comes? Just exactly what should be done, or should the public have some input into that first ministers' meeting that you are going to have in November or whatever time is chosen?

1720

Then the most important one—and you can answer these one, two, three, four or not at all, however you so wish—is the amendment of the amending formula. It is in the Constitution that we have three years to do it. It is in the Constitution. We have to change that in some way, shape or form. How do we get input from the public? We have talked about this. Myself, Mr Allen and Mr Eves were on that committee back in 1988 and we have talked about process, we have discussed that. We have to set up a process whereby we can get an amendment to the Constitution to amend that particular part of the Constitution. How are we going to get that process going? We have such a full constitutional agenda that priorities are going to be difficult to choose. I agree with Mr Wild One—Wild Man; I did not mean that at all.

Mr Wildman: "Wild Man" is quite acceptable. That is how I am referred to on the reserves.

Mr Epp: He has been called worse.

Miss Roberts: I agree that the aboriginal question is the major question at this particular time. Those are questions I have.

Mr Prichard: I must say I think they are great questions. They get at the essence of reforming the process of constitutional reform. Professor Simeon made two or three particular suggestions as to how, within the context that has been set out here, we as a province can contribute, indeed show leadership. How Ontario conducts its affairs might well set precedents for others to do it.

A couple of the proposals that have been made which I think we would want to reinforce are: first, the role of legislators in this process, that we would urge, for example, that legislators be involved in the Senate commission to get the linkage of the legislative process in the province to the constitutional process represented by that; and, second, the merit of having public hearings prior to first ministers' meetings in the agenda-setting exercise.

I think the most difficult place, though, to work out how to make public participation work is, if I can use the example of the Meech Lake accord and the Langevin agreement, how do you inject public participation into that moment when agreement in principle has been reached prior to the finalization of that, the crystallization as the constitutional amendment which must then be taken without amendment through each of the Legislatures of Canada, or through seven Legislatures of Canada, depending on the nature of the amendment?

That I think is the hardest question of all, and on that I personally have not heard the right answer. I certainly do not have the right answer in my head and I have not heard the right answer. For you, as a matter of priority as legislators, to work through and to try to work out how Ontario should conduct itself in that respect I think would be highly advantageous. I would not urge you to try to draw conclusions on that between now and the end of the week. I think you are asking about a critically important process and I would urge you to invite others to help you solve that problem. I would urge you, through the very process of discussing it, to begin to set the kind of standards we want for public participation in that process.

I think it would be premature, because the ideas are probably in short supply at this point and also because to decide it on your own without the benefit of indicating you are trying to work that out for Ontario would be a mistake. I urge you to stay right on course with the question, I urge you not to try to answer the question too quickly and I urge you to involve others in the process of trying to work out the answer.

Dr Simeon: Just to add to that, there is also a kind of ascending order of immediacy. Clearly the process which is about to start first is the appointment in Ottawa, in the House of Commons, of a committee on the Canada clause. I guess all Ontario can be is advisory to that; it is going to be a federal committee.

The second one is on the design of the commission. That too is going to have to get going very quickly. I think there are a lot of important issues to decide with respect to that.

The third one is the hearing process, sort of before and, as Rob Prichard suggested, during the process. I think we really can be exemplary on this and perhaps urge not only that we be exemplary but that there be intergovernmental agreement, or perhaps even constitutional requirements, that everyone behave in these kinds of ways.

The hardest, obviously, to do is to amend the amending formula itself, because that of course requires unanimity. There are very complex but very important political reasons why we ended up with a unanimity clause for some of the important parts of our Constitution. That is the one that is going to be most difficult. Given that is the most difficult, it seems to me what we have to emphasize are much, much better consensus-building mechanisms in the country.

That is why I think of all the sorts of institutional innovations which were suggested here, the greatest potential does lie with that commission which will take ordinary Canadian legislators across the country. Ontario legislators will hear the people in Newfoundland and British Columbia and vice versa. If that process can work well, then I think we really might begin to make this less of a first ministers' process and more of a citizens' and legislators' process.

Miss Roberts: I appreciate your comments, especially your last ones concerning this, that indeed it is important that the legislators across Canada speak to each other and speak to the people all across Canada and to understand where those people are coming from. I really appreciate that and I think that is an important point we must take under advisement.

It has been suggested to us that there is a constituent assembly idea whereby you could have a provincial constituent assembly, or a national constituent assembly or group, that could be responsible for looking at the Constitution and setting agendas and helping to do that, which takes it one step from legislators, which may be right or wrong, into another area. That is something that has been brought to our attention. I appreciate the comments that were made. "Let's not do this in a hurry. Let's have some more advice on it, but let's make sure that we even set a timetable maybe for that advice," is what you were saying to me.

Mr Prichard: It is a splendid idea, as one of the options. I think in some sense it is democracy at its best to imagine a constituent assembly, a constitutional convention. As you know, there are parts of the world where that is used from time to time. One could imagine very positive dimensions. I think there are some linkage problems, in that we also believe in responsible government and the role of each provincial legislature. How you put those two together, of course, again is difficult. But if you were laying out the spectrum of possibilities that should be contemplated, I would urge you to keep that one on the list.

I should just say that I am a little less enthusiastic than Professor Simeon about uniform constitutional requirements as to how each province should conduct itself. I have some sympathy for the view that each province should work out how it will conduct itself on its own and not necessarily try to reach agreement nationally on how every province should conduct what I will call its internal affairs. So the sorts of hearing processes and the kinds of public participation you would want to require in Ontario, I am not sure that needs to be made uniform across Canada. I think it would be difficult to agree and I am not sure that is the—I think it is your jurisdiction as the legislators of Ontario to work out how Ontario should conduct itself in these matters.

As to how it all comes together, that of course is a national matter. But the matters internal to Ontario—I have some sympathy for letting each province experiment and diversify as to

how it is going to go about involving its public in its constitutional deliberations. To the extent Professor Simeon suggests it should be a uniform constitutional requirement, I am a little less enthusiastic about that.

Miss Roberts: I appreciate your comments. One concern I had with the conference that took place in Ottawa three weeks ago or so was the fact that you had 10 premiers of provinces and one national leader. There did not appear to be anything other than that one national leader who dealt with the national scope. Each one of those men from the 10 provinces represented a provincial point of view. I think that is something we have to realize, that it is a weakness in the amending formula which has been there since 1982, and that we must look at that as well. I appreciate the advice you have given to us, and anything else you can do to help us in that process, because no matter what happens on Saturday, that has to be dealt with.

Mr Polsinelli: I have a very quick question. It is one that came to mind in reading an interesting article today in the Toronto Star dealing with the amending formula and the Meech deadline. It suggested one of the ways that could be used to extend the deadline would be for one of the legislatures or the Parliament of Canada to repass the Meech Lake accord, thereby starting the clock running again. Newfoundland has already passed the accord, then revoked it. If Mr Wells and his Legislature repass it, does it start the three-year clock running again?

Mr Prichard: Professor Swinton is the best constitutional lawyer among the three of us. I would rely on her guidance.

Ms Swinton: To some extent it is unclear, because as Professor Simeon said earlier, we are in the first real testing of the 1982 procedures. I think one interpretation would be that there is a three-year clock that runs out on 23 June. So there is, in effect, one process that is going to run out on 23 June. If Newfoundland passes the accord, let's hope, Friday, then that is part of the 1987-to-1990 package. If Newfoundland decided to pass it next week again, I think that might well be a new round. I do not think there is anything in the Constitution that stops us from keeping it going by another round. It strikes me that right now we are coming to the end of a three-year process and then we can start it up again, if you want, in a new fashion next week.

Mr Polsinelli: Is the only interpretation of the time limit a fixed time limit from the time that the first Legislature or Parliament passes the constitutional amendment to three years after that, or can the constitutional amending formula be interpreted as having a flowing time limit, so that if you pass the time limit the first Parliament or Legislature passed the accord, can you go to the time the second Legislature passed the accord and take three years from that?

Ms Swinton: None of this has been tested yet.

Mr Polsinelli: But is that a plausible interpretation?

Ms Swinton: The way I understand the language of the Constitution, there is a three-year clock that turns on when the first Legislature passes it. So when Quebec did it in 1987 the clock turned on. Then everybody else links up to that process. I think it would make almost a mockery of the three-year time limit to say, "Oh, well, now, gee, that is Quebec's three-year clock and then we will have another one when Ontario starts and another one when Saskatchewan starts so that we can keep this going for ever." The time limit in subsection 39(2) of the Constitution really is, I think, meant to say: "Things come to an end. You've got to start all over again."

Dr Simeon: To follow up on Miss Roberts's suggestions, I think one other issue the committee might look at is that three-year deadline. One obviously wants to have enough time for full, public consultations, but elections happen with relative frequency in this country. What one might do is say, "Without tampering with the final deadline, at least require governments to introduce the legislation in a very short time period after the deal is struck, so at least it sets the discussion going." In this case we had them just not introduced in many cases for a long, long time. It allowed things to fester.

The Chair: On that note, I would like to thank all three of you for taking the time to come here today. We have certainly appreciated your input and I thank you on behalf of the committee for the contribution you have made.

Mr Prichard: Thank you very much, Mr Chairman. Good luck this evening.

The Chair: A couple of matters: First of all, I believe it was yesterday, Mr Wildman, you asked the researcher to provide to you some information on aboriginal rights. There is a document that has been prepared. It will be circulated to all the members. It will, I hope, answer your question. It is somewhere in this package.

The clerk has a couple of administrative things. I am going to suggest to you that we take a short recess. The question is, I assume we are going into the writing of this in camera. I need a motion to do so.

Miss Roberts: So moved.

Motion agreed to.

The committee continued in camera at 1734.

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